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1 2001, right?

2 A. Yes.

3 Q. You said you saw him at roll call, right?

4 A. Yes.

5 Q. You also asked him when was the next time you saw him,  
6 right?

7 A. Yes.

8 Q. And he says the next time he was lying on the floor of the  
9 basement of 1700 Metropolitan Avenue, right?

10 A. No, I didn't ask him -- it's not in the DD5 when is the  
11 next time I saw him.

12 Q. Sir, doesn't the DD5 state, he states then the next time he  
13 saw Albert Acosta is when he was lying on the floor at 1700  
14 Metropolitan Avenue in the basement. Is that in your DD5?

15 A. You want to show me that.

16 Q. Sir, you see a little star under No. 1, a little star.

17 A. Okay.

18 Q. Do you see the second sentence, he then states?

19 A. Yes, I see that.

20 Q. Did I read it correctly?

21 A. Yes.

22 Q. This is something you prepared, correct?

23 A. Yes.

24 Q. And you asked Mr. Manganiello where he was at the point in  
25 time when the call came in, correct?

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1 A. Yes.

2 Q. You said he was on a personal by the oval, right?

3 A. Yes.

4 Q. By the way, sir, you also stated in here that you asked him  
5 for his address, and he said he didn't know, correct?

6 A. That's correct.

7 Q. You also say in here that you asked him for his phone  
8 number and he replied that it was unlisted, correct?

9 A. Correct.

10 Q. The original handwritten notes from that interview have  
11 disappeared?

12 A. That's correct.

13 Q. And all we have left is this DD5?

14 A. Yes.

15 Q. And you never gave those handwritten notes to the district  
16 attorney's office, did you?

17 A. Like I said once before, I gave the whole box, everything  
18 that had to do with the case, I gave the whole box to the  
19 district attorney.

20 Q. Sir, did you ever offer testimony to the exact opposite  
21 four years ago?

22 A. Excuse me?

23 Q. Did you offer the exact opposite testimony four years ago?

24 A. Yes. You told me yesterday.

25 THE COURT: I am not quite sure, not that again it's

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1        terribly important, but when the plaintiff here told you that  
2        his phone number was unlisted. That doesn't mean he doesn't  
3        have one, right?

4                 THE WITNESS: Right.

5                 THE COURT: But you didn't pursue that issue and ask  
6        him what it was, regardless of whether it was unlisted?

7                 THE WITNESS: Sir, these questions, when he first came  
8        in --

9                 THE COURT: Just yes or no.

10                THE WITNESS: No, I didn't pursue it.

11                Q. Sir, did you also testify at trial that you asked Anthony  
12        Manganiello what his address was -- strike that.

13                Sir, did you also testify at the criminal trial of  
14        Anthony -- People of State of New York against Anthony  
15        Manganiello in June of 2004 that you asked him what his address  
16        was, and he said, I don't know, I don't know?

17        A. He said I don't know.

18        Q. Is that the testimony you offered at trial?

19        A. Yes. I don't know. That's what you're saying.

20        Q. Sir, let me show you your trial testimony, page 288. Sir,  
21        I'll direct your attention to lines 19 through 25. Do you in  
22        fact state when asked -- when Mr. Manganiello was asked what  
23        his address was, he said I don't know?

24        A. That's correct.

25        Q. And did you also testify at trial -- by the way, I'll

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1 direct your attention to page 289, the following page, lines 8  
2 through 15. Did you also testify that on February 12, 2001,  
3 you asked him for his phone number and he said it's unlisted?

4 A. That's correct.

5 Q. By the way, on February 12 -- when this conversation  
6 occurred, was Mr. Abate in a room with you?

7 A. Yes.

8 Q. On February 12, did you fill out an arrest report?

9 A. Yes.

10 Q. On the arrest report it has a section for address, correct?

11 A. Yes.

12 Q. And on February 12, 2001, did you put Mr. Manganiello's  
13 address on that arrest report?

14 A. Yes.

15 Q. And Mr. Manganiello gave you his address?

16 A. That night, yes.

17 Q. And that arrest report has gone missing, too, correct?

18 A. That's correct.

19 Q. So that arrest report was never given to the district  
20 attorney's office, right?

21 A. Sir, everything in the box, like I said, was given to the  
22 district attorney's office. Everything -- I can't say  
23 specifically what was in it, but everything was given to the  
24 district attorney's office.

25 THE COURT: In the regular course of business, would

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1 the arrest report be part of what was in the file?

2 THE WITNESS: Yes.

3 THE COURT: So it would likely be in the box?

4 THE WITNESS: It would likely be in the box.

5 Q. Sir, were people from the crime scene division called to  
6 the 43rd Precinct?

7 A. I know some people came in. I don't know what unit they  
8 were in, but they did come into the 43rd Precinct, yes.

9 Q. And did Mr. Manganiello provide these people with his  
10 pedigree information?

11 A. I wasn't there when that happened.

12 Q. Sir, on February 12, 2001, you're aware of statements made  
13 by Walter Cobb, correct?

14 A. Give the date again.

15 Q. The date of the incident.

16 A. No, sir.

17 THE COURT: All of what Mr. Joseph is doing, just to  
18 continue your legal education, is called prior inconsistent  
19 statements; that is, statements that were given at an early  
20 earlier time which differ than the statements that are given on  
21 the witness stand. It's really an issue of credibility.

22 Remember I spoke to you at some length about credibility. If  
23 you find it is sufficiently significant and material so that it  
24 impeaches his credibility, then you can conclude that he was  
25 not testifying credibly. On the other hand, you have no

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1 obligation to find that it was that way, or that it was  
2 material. I will talk to you more about it, but I just want  
3 you to understand the concept.

4 MR. JOSEPH: Thank you, your Honor.

5 Q. Sir, on February 12, 2001, were you aware of information  
6 provided by Walter Cobb?

7 A. I don't believe so, sir, no.

8 Q. Sir, did you ever say you were?

9 A. That I were what?

10 Q. Did you ever say that you were aware of the statements made  
11 by Walter Cobb on February 12, 2001?

12 A. Yes. Maybe after February 12, not on February 12.

13 Q. Sir, while you were interviewing Mr. Manganiello an  
14 attorney called, correct?

15 A. Yes.

16 Q. And he said -- sir, let me ask you this. Did you testify  
17 at a hearing on June 21, 2004?

18 A. I believe it was that day. I don't remember the date.

19 Q. Sir, on page 332, beginning on line 2 were you asked these  
20 questions and did you give this answer:

21 "Q. Detective, prior -- up until the time you just described  
22 for us, up until you get the phone call now from the attorney,  
23 is there any one thing that happens which now turns  
24 Mr. Manganiello, in your eyes, from a witness to a suspect?"

25 "A. Yes.

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1 "Q. What?

2 "A. After hearing from other detectives, Detective Abate, that  
3 we have a witness who was at the time, we call him the porter,  
4 that saw her, heard the shots, went to the location. And when  
5 he opened the door, Anthony Manganiello was there. He asked  
6 Anthony Manganiello, did you hear the shots and he said yeah, I  
7 heard it, you run this way, I'll go this way.

8 "Q. And by this porter, do you now know this porter's name to  
9 be Mr. Walter Cobb?

10 "A. Yes."

11 A. Now that you refreshed my memory, yes.

12 Q. On February 12, 2001, you were aware of statements that had  
13 been made by Walter Cobb?

14 A. Sir, you asked me now. Whatever you said right there,  
15 that's fine. But you are asking me now, and I'm telling you, I  
16 don't know and I don't think so. As I apparently testified to,  
17 yes, but you're asking me today. I can't remember.

18 THE COURT: You're clear that your memory was better  
19 then than it is now.

20 THE WITNESS: Yes, sir.

21 Q. And four years ago, you testified that on February 12,  
22 2001, you were aware of what information Walter Cobb had  
23 provided?

24 A. You're asking me today?

25 Q. I'm asking if you testified under oath four years ago that

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1 you were aware that -- of statements given by Walter Cobb on  
2 the day of Mr. Acosta's murder.

3 A. Yes.

4 Q. Sir, was a gunshot residue test performed on  
5 Mr. Manganiello's hands and clothing?

6 A. I believe so.

7 Q. What happened to the results of that test?

8 A. I believe the results came, and I don't know who received  
9 it. Either I received it or the ADA received it. I asked her  
10 basically --

11 MR. JOSEPH: Judge, I'm just -- not what the results  
12 were.

13 A. Do you want me to say what happened to her.

14 Q. Were those results in the case file that was lost?

15 A. Yes.

16 Q. By the way, was Mr. Manganiello wearing a jacket when you  
17 were interviewing him?

18 A. I remember when he came into the precinct he was wearing a  
19 jacket, yes.

20 Q. And was the jacket taken from him?

21 A. I don't know.

22 Q. Sir, I will ask you to review page 335 of your hearing  
23 testimony. I am going to ask you whether this refreshes your  
24 recollection as to whether Mr. Manganiello's jacket was taken  
25 from him.

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1                   THE COURT: It's a two-part question. The first part  
2 of the question is whether it does or does not refresh your  
3 recollection.

4                   THE WITNESS: No, sir.

5                   THE COURT: That's the end of that. What's next?

6 Q. Sir, did you voucher Mr. Manganiello's jacket?

7 A. Sir, I don't know if I did or not. I am not sure. I can't  
8 remember.

9                   THE COURT: In case you were worried where any of the  
10 parties were, you know that in a civil case they don't have to  
11 be here every minute of the time.

12 Q. Sir, let me ask you, did you testify four years ago at the  
13 hearing on page 335 line 2:

14 "Q. At that point in time does something else of an  
15 evidentiary nature come into your possession from  
16 Mr. Manganiello?

17 "A. To me?

18 "Q. Well, to you and the detectives working on the case.

19 "A. Yes.

20 "Q. What?

21 "A. It was a jacket.

22 "Q. Whose jacket was it and where was it?

23 "A. It was the defendants's jacket.

24 "Q. And was it on his person? Was it in a room? Where was  
25 it?

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1 "A. It was on his person."

2 Did you give that testimony?

3 A. Sir, I don't remember. I don't remember saying that.

4 Q. By the way, was Mr. Manganiello's memo book taken from him?

5 A. Yes.

6 Q. And in the memo book he wrote down times where he was --  
7 strike that. In the memo book he recorded where he was and at  
8 what time he was there, correct?

9 A. I don't remember what is the content inside a memo book.

10 THE COURT: You know it wasn't in the box?

11 THE WITNESS: It was in the box also.

12 THE COURT: Do we have it or don't we have it?

13 THE WITNESS: No, we don't have it.

14 Q. Sir, is it fair to say that the memo book has gone missing,  
15 too?

16 A. Yes.

17 Q. And the memo book was a piece of evidence?

18 A. Yes.

19 Q. Was there a procedure at the 43rd Precinct by which a piece  
20 of evidence could be vouchered?

21 A. Yes.

22 Q. And you've used that procedure on many, many occasions to  
23 secure evidence, correct?

24 A. That's correct.

25 Q. And on this particular occasion, Mr. Manganiello's memo

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1 book was never vouchered, was it?

2 A. It was never vouchered.

3 Q. According to your testimony, you had possession of the memo  
4 book for approximately two years, correct?

5 A. Three years, I believe.

6 Q. And in that three years you never vouchered  
7 Mr. Manganiello's memo book, correct?

8 A. That's correct.

9 Q. And it went missing when the ADA requested that she be  
10 provided with it, correct?

11 A. That's correct.

12 Q. Sir, did you take the memo book from Anthony Manganiello?

13 A. I don't remember if I took it or someone else did. I don't  
14 remember that.

15 Q. Was it taken because you and the other detectives working  
16 on the case wanted to see where he was on February 12, 2001,  
17 correct?

18 MS. OKEREKE: Objection, your Honor.

19 THE COURT: I think that's perfectly reasonable.

20 That's certainly what I would want to know. Overruled.

21 A. He just wanted to see probably what's in the contents  
22 inside the memo book.

23 THE COURT: Amongst those contents I would assume he  
24 wanted to see where he was on the day of the murder.

25 THE WITNESS: Probably, sir, but I can't remember

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1 that.

2 Q. Sir, that memo book disappeared, correct?

3 A. Yes.

4 Q. And everything that was inside of the memo book  
5 disappeared, too, correct?

6 A. That's correct.

7 Q. Sir, when was it that this memo book disappeared?

8 A. The whole box disappeared some time -- this is an  
9 approximate -- either January of 2003, and that's an  
10 approximate. It's not -- to January, I would say, or February  
11 of 2004.

12 Q. When was the last time you saw the memo book?

13 A. The memo book. I don't know when I saw the memo book. I  
14 know when I saw the box, but I don't know when I saw the memo  
15 book.

16 Q. Would it have been some time in 2003, 2004?

17 A. I can't tell you, sir.

18 Q. Did you ever give testimony that the last time you saw the  
19 memo book was 2001?

20 A. Maybe I did. I can't remember that.

21 Q. At your deposition seven months ago on page 116 were you  
22 asked this question and did you give this answer:

23 "Q. When was the last time you saw the memo book?

24 "A. Some time that year.

25 "Q. In 2001?

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1 "A. Yes."

2 A. Okay.

3 Q. According to your testimony, the memo book went missing  
4 long before the file did?

5 A. No, sir. The memo book was with the file.

6 Q. You say the last time you saw the file was in 2003 or 2004,  
7 correct?

8 A. It's a box, yes.

9 Q. But in your deposition seven months ago you told us the  
10 last time you saw the memo book was in 2001, isn't that true?

11 A. That's what I testified, yes.

12 THE COURT: What's true today?

13 THE WITNESS: Sir, I can't remember when the last time  
14 I saw the memo book. He's asking me today when was the last  
15 time I saw it, and I can't remember the last time I saw the  
16 memo book.

17 THE COURT: Wasn't the memo book in the box?

18 THE WITNESS: Yes, sir.

19 THE COURT: When is the last time you say today you  
20 say you saw the box?

21 THE WITNESS: The last time I saw the box was  
22 January -- approximately, I would say, either January of  
23 2003 --

24 Q. Sir on February 12, 2001, did a lawyer call on  
25 Mr. Manganiello's behalf?

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1 A. February 12, yes.

2 Q. And did you consider Mr. Manganiello a suspect because a  
3 lawyer called for him?

4 A. In my thoughts I thought there was something suspicious  
5 about it, but I didn't consider him a suspect because it wasn't  
6 my case.

7 Q. Sir, did you become suspicious because a lawyer was called?

8 A. Yes, sir.

9 Q. Sir, did the fact that a lawyer called on Mr. Manganiello's  
10 behalf make him a suspect in your eyes?

11 A. It wasn't my case, so he's not a suspect. I didn't  
12 consider him a suspect because it wasn't my case, but I had  
13 suspicion of it because the lawyer called.

14 Q. Sir, did you give testimony at a pretrial hearing on June  
15 21, 2004?

16 A. I don't know.

17 Q. Sir, let me ask you, were you asked this question on page  
18 352, line 6:

19 "Q. Now when this lawyer called and said, stop questioning,  
20 did that make him more of a suspect in your eyes?"

21 "A. In my eyes, yes."

22 A. Right, in my eyes, but it wasn't my case.

23 Q. Did you give that testimony, sir?

24 A. If it's there, yes.

25 THE COURT: Do you want to see any it? Do you have

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1 any question about it?

2 THE WITNESS: Sir, I don't remember saying that.

3 THE COURT: That's a good reason to look at it and see  
4 if that makes you feel more secure or refreshes recollection or  
5 both.

6 A. I don't remember giving it. I don't remember it.

7 Q. Sir, do you have any dispute that that's what you said four  
8 years ago?

9 A. Sir, I don't know.

10 Q. And when this case became yours on February 12, 2001 some  
11 time in the evening, you considered Mr. Manganiello a suspect  
12 because a lawyer had called for him, correct?

13 A. Not only because the lawyer called, no.

14 Q. Was the fact that a lawyer called for Anthony Manganiello  
15 one of the reasons you considered him a suspect when you  
16 inherited this case on February 12, 2001?

17 A. There was other things, sir.

18 Q. Was that one of the reasons, sir?

19 A. It could be one of the reasons, yes.

20 Q. Could be?

21 A. Could be.

22 THE COURT: You sort of said it was one of the reasons  
23 in that transcript, unless you're now telling us you didn't say  
24 that.

25 THE WITNESS: He's saying before then when the lawyer

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1       called. When the lawyer called -- when the lawyer called, it  
2       was 12 in the afternoon. It wasn't my case.

3       Q. It became your case at some point after 12 in the  
4       afternoon, right?

5       A. After, late at night.

6       Q. Late at night, when the case became yours, in your eyes,  
7       Mr. Manganiello was still a suspect because a lawyer had called  
8       for him, correct?

9       A. Not only because the lawyer called, no.

10      Q. Sir, was that one of the reasons you considered him a  
11       suspect, because a lawyer called on his behalf?

12      A. It was probably one of the reasons, but it's not the only  
13       reason.

14      Q. Sir, isn't it true that you considered Mr. Manganiello  
15       guilty because a lawyer called for him?

16      A. No, sir.

17      Q. Do you recall your deposition seven months ago? Let me  
18       just direct your attention to page 58, lines 3 through 7. Did  
19       you, in fact, say you considered him guilty of something  
20       because a lawyer called?

21      A. I can't find --

22      Q. 58, line 3, sir.

23      A. It says I won't say guilty. It says, I don't know. Guilty  
24       of something.

25      Q. Is it true, sir, you considered him guilty of something

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1 because a lawyer called?

2 A. Guilty of something. That's what it says here.

3 Q. Those were your words, right?

4 A. That's what it says here, yes, my words.

5 Q. By the way, did you do a background check on  
6 Mr. Manganiello?

7 A. I don't remember whether I did.

8 Q. Sir, at the point in time when the lawyer called, you  
9 stopped questioning Mr. Manganiello, correct?

10 A. Yes.

11 Q. And at that point in time when the lawyer called, was there  
12 any evidence that you were aware of that in any way connected  
13 Anthony Manganiello to the murder of Albert Acosta?

14 A. At the time when the lawyer called?

15 Q. Yes.

16 A. I didn't have him as a suspect. I thought I was  
17 interviewing someone that had information on the shooting  
18 itself. That's what I thought. He was never considered a  
19 suspect when his lawyer called.

20 Q. That wasn't the question, sir. Sir, the question is, at  
21 the point in time when the lawyer called, were you aware of any  
22 information that in any way tied Anthony Manganiello to the  
23 murder of Albert Acosta?

24 A. No.

25 Q. And at that point you were aware of whatever Walter Cobb

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1 had said, correct?

2 A. No, sir.

3 Q. Did you testify four years ago you were?

4 A. At the time of his interview, no, I wasn't aware of Walter  
5 Cobb.

6 Q. At the time the lawyer called were you aware of Walter  
7 Cobb?

8 A. I am not sure.

9 Q. On February 12, 2001, you were aware of what Walter Cobb  
10 said, correct?

11 A. I don't remember that.

12 Q. Did you ever testify that you were?

13 A. I could have, but I don't remember.

14 Q. Sir, let me ask you, is it your testimony that when the  
15 lawyer called you didn't know about Walter Cobb?

16 A. That's correct.

17 Q. Sir, didn't you admit a few minutes ago at the time the  
18 lawyer called you were aware of what Mr. Walter Cobb said?

19 MS. OKEREKE: Objection, your Honor. These questions  
20 have been asked and answered.

21 MR. JOSEPH: I'll move on.

22 THE COURT: Are you finished or close to finished?

23 MR. JOSEPH: No, your Honor. I have a good deal more.

24 Q. Sir, at any point on February 12, 2001, did you have  
25 probable cause to arrest Anthony Manganiello for the crime of

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1 murder?

2 A. Did I have probable cause, no, sir.

3 Q. But you arrested him anyway, right?

4 A. I didn't arrest him.

5 MS. OKEREKE: Objection, your Honor.

6 THE COURT: Overruled. What did he do?

7 THE WITNESS: Sir, some time during the day he was put  
8 in a cell, but it wasn't my case yet. It didn't become my case  
9 until that night. That night he was already in the cell. So I  
10 had to arrest him and void the arrest.

11 THE COURT: You had to arrest him --

12 THE WITNESS: He was in the cell already. I had to  
13 like process it as a voided arrest.

14 Q. Sir, when he was put in the cell, what time was he put in  
15 the cell?

16 A. Sir, I don't know. I didn't put him in the cell.

17 Q. Were you there when it happened?

18 A. I was in a squad office, but I didn't see anyone putting  
19 him in the cell.

20 Q. The cell itself is in the squad office, right?

21 A. That's correct.

22 Q. As you walking down doing work, you could see the cell?

23 A. Yes.

24 Q. You saw Anthony Manganiello sitting in the cell?

25 A. At one point, yes.

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1 Q. When you saw him on February 12, 2001, sitting in a cell,  
2 you knew there was no probable cause to arrest him, right?

3 A. Sir, it wasn't my case.

4 Q. Is that a yes or no, sir?

5 A. It wasn't my case. If it was my case, I could tell you  
6 whether it was probable cause or not.

7 Q. At that point in time it was still Mr. Abate's case?

8 A. Yes.

9 Q. So it means it was Mr. Abate's decision to arrest Anthony  
10 Manganiello at the point in time there was still no probable  
11 cause?

12 MS. OKEREKE: Objection, your Honor.

13 THE COURT: Overruled.

14 A. I wouldn't know if it was his decision. I don't know if it  
15 was his decision or a superior's decision. I don't know.

16 Q. Sir, isn't it true that the lead detective is the one that  
17 would make the decision?

18 A. Either the lead decision or his supervisor. The lead  
19 detective just can't do whatever he wants. He has supervisors.

20 THE COURT: For every arrest they go to a supervisor  
21 and they don't exercise their own independent judgment to make  
22 any arrests?

23 THE WITNESS: Detectives make arrests, but a  
24 supervisor has to sign off on it.

25 THE COURT: But in the regular course -- go ahead.

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1 Let's keep moving here.

2 MR. JOSEPH: Certainly, your Honor.

3 Q. Sir, what time was Anthony Manganiello released?

4 A. I don't know what time. I know it was at night.

5 Q. Was it the following morning?

6 A. I don't know, sir.

7 Q. Sir, wasn't it approximately 5:00 the following morning?

8 A. I wouldn't know.

9 MR. JOSEPH: Your Honor, at this point I would ask to  
10 introduce Exhibit 61. I don't believe there is an objection.

11 (Plaintiff's Exhibit 61 received in evidence)

12 THE COURT: By the next morning it was your case,  
13 right?

14 THE WITNESS: By that night, sir.

15 THE COURT: When you got out at 5:00 in the morning,  
16 it was your case, but you had nothing to do with his release?

17 THE WITNESS: No. I released him, yes. But I don't  
18 know what time it was. I know it's nighttime, but I don't know  
19 what time it was.

20 THE COURT: 61 will be admitted without objection.

21 (Plaintiff's Exhibit 61 received in evidence)

22 Q. Sir, I am going to show you what's been marked as Exhibit  
23 61. You created this, correct?

24 A. Yes.

25 Q. And according to Exhibit 61, on February 12, 2001, the

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1 district attorney did not authorize the arrest of Anthony  
2 Manganiello, correct?

3 A. That's correct.

4 Q. And you knew that by 10:00, correct?

5 A. I don't know what time did I know it by. I know that I  
6 called. I had called him and spoke to him. I don't know what  
7 time if you're looking time wise.

8 Q. Why don't you look at the document. Does it say on there  
9 at 10 something p.m. you were told there was no probable cause  
10 to hold Anthony Manganiello?

11 A. You want to show me where it says 10 something p.m.?

12 Q. Doesn't it say 2200 hours, sir?

13 A. 2025 is 8:25.

14 Q. At 8:25 were you told there was no probable cause to hold  
15 Anthony Manganiello by a district attorney?

16 A. No, sir. At 8:25 all I did is I wrote down that the person  
17 died at 8:25.

18 Q. But on the same DD5, which you document your activities at  
19 8 something at night, you say, do you not, that there was --  
20 defendant was arrested, then released, ADA Dondes, did not  
21 authorize arrest?

22 A. It doesn't say that it was at 2025. But at 2025 the person  
23 died.

24 Q. On this same document, No. 2, it says ADA Dondes doesn't  
25 authorize arrest?

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1 A. That's correct.

2 Q. No. 1 says 2025 hours, right?

3 A. Yes.

4 Q. And this is the same DD5, correct?

5 A. That's correct.

6 Q. Sir, you didn't release Anthony Manganiello until the  
7 following morning, isn't that correct?

8 A. Sir, it was nighttime. I don't know what time it was when  
9 I released him, but it was night.

10 Q. Sir, was a warrant to search Anthony Manganiello's car  
11 obtained on February 12, 2001?

12 A. Yes.

13 Q. And did Mr. Shawn Abate convey information to the Assistant  
14 District Attorney, ADA Dondes, in order to get the search  
15 warrant?

16 MS. OKEREKE: Objection, your Honor.

17 THE COURT: If you know, you can answer.

18 MR. JOSEPH: I'll rephrase it, Judge.

19 Q. Sir, were you present with Shawn Abate during the course of  
20 the day on February 12, 2001?

21 A. Yes.

22 Q. And were you present when he went and spoke with ADA  
23 Dondes?

24 A. That's correct, yes.

25 Q. And one of the things Shawn Abate did on February 12, 2001

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1 was provide Mr. Dondes with information to obtain a search  
2 warrant for Anthony Manganiello's car?

3 MS. OKEREKE: Objection, your Honor.

4 THE COURT: If you know, you can answer. If you don't  
5 know --

6 A. I don't remember, sir.

7 Q. Did you remember seven months ago?

8 A. Sir, I don't remember if he told any information to the --  
9 I don't know if I was present, if I stepped out of the room. I  
10 don't know.

11 Q. Well, sir, I'll tell you, what. On page 94 of your  
12 deposition, beginning on line 3, were you asked these questions  
13 and did you give these answers:

14 "Q. At some point did you speak with an Assistant district  
15 attorney named Dondes?

16 "A. Yes.

17 "Q. Was that on February 12, 2001?

18 "A. Yes.

19 "Q. For what reason did you speak to ADA Dondes?

20 "A. It was Shawn Abate that was speaking with him. Shawn  
21 Abate, I believe, was trying to obtain a search warrant for  
22 Mr. Manganiello's vehicle."

23 were you asked those questions seven months ago and  
24 did you give those answers under oath?

25 A. Yes.

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1 Q. February 12, 2001, you and Mr. Abate went to the ADA's  
2 office together, correct?

3 A. Yes.

4 Q. And there is a procedure for obtaining a search warrant,  
5 correct?

6 A. Yes.

7 Q. And that procedure is the officer has to sign an affidavit,  
8 correct?

9 A. Yes.

10 Q. And in the affidavit the officer has to state what facts he  
11 knows about that provides probable cause to support a search,  
12 correct?

13 A. That's correct.

14 Q. On February 12, 2001, you weren't aware of any facts that  
15 establish probable cause to believe that Anthony Manganiello  
16 had shot and killed Albert Acosta, isn't that correct?

17 MS. OKEREKE: Objection, your Honor. Asked and  
18 answered several times.

19 THE COURT: Overruled.

20 THE WITNESS: Do I answer?

21 THE COURT: Please.

22 A. I didn't obtain the search warrant.

23 Q. That wasn't the question.

24 A. What was the question?

25 Q. The question was, did you have any information that would

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1 support probable cause on February 12, 2001 to believe that  
2 Anthony Manganiello shot and killed Albert Acosta?

3 A. I wasn't the one obtaining the search warrant. You have to  
4 ask the detective who was obtaining the search warrant whether  
5 he had it or not. I was not obtaining the search warrant.

6 Q. By the way, the affidavit for the search warrant, that's  
7 one of the documents that was put into the case file?

8 A. That is correct.

9 Q. And that affidavit disappeared?

10 A. Yes.

11 Q. We will never know what it said.

12 A. I guess not. I don't have it.

13 Q. And it was never provided.

14 I'll withdraw the question.

15 By the way, was the application for the search warrant  
16 granted?

17 A. Yes.

18 Q. Was a search conducted of Anthony Manganiello's car on  
19 February 12, 2001?

20 A. Yes.

21 Q. And would it be fair to say it was a thorough search?

22 A. I didn't search the car, sir.

23 Q. Were you present when it was done?

24 A. Yes.

25 Q. From your observations as a detective on the job for 19

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1 years at the time, was it?

2 A. No, sir.

3 Q. Fourteen years?

4 A. Yes.

5 Q. As a detective on the job for 14 years, was it your  
6 observations that the search of Anthony Manganiello's car was a  
7 thorough one?

8 A. I would say so, yes.

9 Q. In fact, the car was actually x-rayed, wasn't it?

10 A. At one point, yes.

11 Q. And was there any --

12 MS. OKEREKE: Objection.

13 THE COURT: To the x-rays?

14 MS. OKEREKE: There was a motion in limine regarding  
15 this issue, your Honor.

16 MR. JOSEPH: I'm not introducing those documents,  
17 Judge. I'm just asking what was done.

18 THE COURT: That's what I thought.

19 Q. Sir, as a result of this thorough search, was there any  
20 weapons or evidence found in Mr. Manganiello's vehicle that in  
21 any way tied him to the shooting of Albert Acosta?

22 A. Any weapons or anything?

23 Q. Was there any evidence which tied Anthony Manganiello to  
24 the shooting of Albert Acosta?

25 A. No, sir.

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1 Q. Sir, the point in time that the search warrant was  
2 obtained, statements given by Mr. Huello were already in police  
3 custody, correct?

4 A. Can you rephrase that, please?

5 Q. Sure.

6 MR. JOSEPH: At this point, I would offer Exhibit 28  
7 in evidence.

8 THE COURT: Admitted without objection.

9 (Plaintiff's Exhibit 28 received in evidence)

10 MR. JOSEPH: Judge, I also offer Exhibit 4 in  
11 evidence.

12 THE COURT: That, too, is admitted without objection.

13 (Plaintiff's Exhibit 4 received in evidence)

14 Q. Sir, I show you what's been marked as Exhibit 4. Is this  
15 one of the documents that you had as part of your  
16 investigation?

17 A. Yes.

18 Q. And according to this document, this is a DD5 created which  
19 contains the statements of a Richard Huello, correct?

20 A. That's correct.

21 Q. And Huello arrived, according to Exhibit No. 4, Mr. Huello  
22 arrived at 1700 Metropolitan Avenue at approximately 9:25 in  
23 the morning, correct?

24 A. I just have to read it. Is that okay?

25 Q. Sure.

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1 A. I just don't see the time. You said 9:25 in this document?

2 Q. Sir, does it say he arrives at 1700 Metropolitan Avenue?

3 A. Yes.

4 Q. And according to Exhibit No. 8, an SPO Nieves provides  
5 Mr. Huello with a key at approximately 9:25 in the morning,  
6 correct?

7 A. Well, it states at 9:25 he was directed by a lieutenant to  
8 take the key over to 1700 Metropolitan Oval. At that time he  
9 was directed.

10 Q. By car, 1700 Metropolitan Oval is not very far from where  
11 the central office is, right?

12 A. Sir, I don't know.

13 Q. Sir, does it indicate at approximately 9:25 Mr. Huello is  
14 at 1700 Metropolitan Avenue? Reading these two documents  
15 together, is it fair to say that Mr. Huello was at 1700  
16 Metropolitan Avenue at approximately 9:25 a.m.?

17 A. That's not what my conclusion is.

18 Q. Sir, when Mr. Huello is let into the basement does he hear  
19 a walkie-talkie?

20 A. Yes, he does.

21 Q. And he bangs on the door, correct?

22 A. Correct.

23 Q. And there is no response, correct?

24 A. Correct.

25 Q. And he's at the basement of 1700 Metropolitan Avenue

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1 continuously until Mr. Cobb arrives, correct?

2 A. Correct.

3 Q. And Mr. Huello doesn't hear any shots, does he?

4 MS. OKEREKE: Objection, your Honor.

5 Q. According to the statement.

6 A. Can I just read this, please?

7 Q. Yes, of course.

8 THE COURT: Do you have a ground for that objection?

9 MS. OKEREKE: I believe Mr. Joseph clarified his  
10 question.

11 A. It states here -- you said he remained. It states here he  
12 left and went to the main office after he spoke to the  
13 maintenance worker.

14 Q. And the maintenance worker was Mr. Cobb, correct?

15 A. I don't know. It says maintenance worker. It doesn't say  
16 Mr. Cobb in there. Later on here it says maintenance guy  
17 walking by, Walter Cobb.

18 Q. Is it fair to say that based upon Exhibit No. 4, Mr. Huello  
19 was in the basement of 1700 Metropolitan Avenue before Mr. Cobb  
20 comes on the scene?

21 A. Before?

22 Q. Correct.

23 A. That's what it states, yes.

24 Q. And this is a document that you had in your investigation  
25 file, correct?

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1 A. Yes.

2 Q. And, sir, according to Mr. Huello, he didn't hear any shots  
3 after he arrived, did he?

4 A. That's what it states here, yes.

5 Q. And he didn't see Anthony Manganiello in the basement at  
6 all, did he?

7 A. It doesn't state that he saw him, no.

8 Q. And he was working directly across from where Mr. Acosta  
9 was found, correct?

10 A. I don't remember the room that he was working in.

11 Q. Sir, do you consider there to be a conflict between what  
12 Mr. Cobb says on one hand and what Mr. Huello says on the  
13 other?

14 A. No.

15 MR. JOSEPH: Your Honor, I wanted to move Exhibit 5  
16 into evidence. I don't believe there is an objection.

17 THE COURT: No objection, it will be admitted.

18 (Plaintiff's Exhibit 5 received in evidence)

19 Q. Sir, I'll show you what's been marked as Exhibit No. 5.  
20 Sir, you've seen this document before today, correct?

21 A. Yes.

22 Q. And this is a DDS prepared by Detective Martinez, correct?

23 A. That's correct.

24 Q. And this is a document you had as part of your  
25 investigation file, yes?

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1 A. Yes.

2 Q. And this represents a statement that Mr. Martinez took from  
3 Officer Alex Perez, correct?

4 A. That's correct.

5 Q. By the way, when was the statement taken?

6 A. February 12.

7 Q. Same day as the Acosta murder?

8 A. Yes.

9 Q. And did Officer Perez -- strike that.

10 Officer Perez relates at the bottom of the document  
11 what, if anything, Mr. Cobb told him, correct?

12 A. Hold on. Let me read it. Mr. Cobb told him? Okay. That  
13 Cobb heard the shots.

14 Q. And there is no mention of Mr. Cobb seeing Anthony  
15 Manganiello at the scene, is there?

16 A. There is nothing written here.

17 Q. And there were also handwritten notes taken of that  
18 conversation, yes?

19 A. You'll have to ask the person who took it.

20 Q. If the person who took it did in fact take it, he would  
21 have given it to you in the ordinary course of business to be  
22 put into the case file, correct?

23 A. Correct.

24 Q. Those notes, if they existed, were lost, correct?

25 A. That's correct.

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1                   MR. JOSEPH: I am going to ask to move Exhibits 26 and  
2 27 into evidence. I don't believe there is an objection. On  
3 consent, 26 and 27 in evidence.

4                   THE COURT: No objection, they will be admitted.

5                   (Plaintiff's Exhibits 26 and 27 received in evidence)

6 Q. Sir, I'll show you what has been marked as Exhibit 26. Do  
7 you recognize this?

8 A. This is the first one you gave me, correct, 26?

9 Q. It has 26 on it.

10 A. Yes.

11 Q. This is a document you created, correct?

12 A. That's correct.

13 Q. And when did you create this document?

14 A. On February 24, 2001.

15 Q. Approximately two weeks after the incident, correct?

16 A. Correct.

17 Q. After you interviewed Mohammed Riaz, correct?

18 A. Yes.

19 Q. Did Mr. Riaz tell you he picked up a Hispanic male and he  
20 overheard the male talking on the cell phone that he saw a  
21 security officer get shot?

22 A. Correct.

23 Q. This is before Anthony Manganiello was rearrested on April  
24 20, 2001?

25 A. That's correct.

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1 Q. Sir, I am going to draw your attention now to Exhibit 27.

2 Do you recognize Exhibit 27, correct?

3 A. Yes, that's correct.

4 Q. It's a document you prepared?

5 A. Yes, sir.

6 Q. And you found the individual who had been in Mr. Riaz's  
7 cab, yes?

8 A. Yes.

9 Q. His name was Alfred Vasquez, right?

10 A. Yes.

11 Q. And you spoke to Mr. Vasquez once, yes?

12 A. Yes.

13 Q. He said a couple of days after the incident he took a cab  
14 and he spoke to somebody on the cell phone and he said he  
15 imagined himself being there, correct?

16 A. That's correct.

17 Q. And he said he imagined himself being present when the  
18 security officer was shot?

19 A. When the person was shot. I don't believe he said  
20 security.

21 Q. Sir, don't you write down --

22 A. I said security officer, yes.

23 Q. After this interview did you do any follow-up investigation  
24 on Alfred Vasquez?

25 A. Sir, I interviewed him and he said no, that he was only

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1       lying about it.

2       Q. And you bought that, you believed that?

3       A. Yes, sir.

4       Q. And you didn't do any other follow-up investigation into  
5       Alfred Vasquez at all, correct?

6       A. Not that I remember, sir.

7       Q. Did you find Mr. Vasquez's story suspicious at all?

8       A. Suspicious, no. He just said he was talking to someone  
9       over the phone, and he wanted to like, I guess -- I don't know,  
10      make himself big that he sold this, he sold that. When I asked  
11      him did he see whoever shot the Parkchester security, he said  
12      no. I just makes thing up. I was just on the phone talking to  
13      someone.

14      Q. Did you ever check Mr. Vasquez's fingerprints to see if  
15      they matched any other fingerprints found on the crime scene on  
16      February 12, 2001?

17      A. Sir, I don't remember.

18      Q. Anywhere in your DD5 does it indicate that that happened?

19      A. No.

20      Q. And if you do that, would you have made a DD5 about it?

21      A. If I did that, of course, yes.

22      Q. And there is no DD5?

23      A. No DD5.

24      Q. Sir, we have been talking about this case file. When you  
25      took possession of the case file was it your responsibility to

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1 maintain all the reports and evidence during the investigation  
2 and secure it for trial?

3 A. Yes.

4 Q. And one of the purposes of securing this evidence is to  
5 guarantee a fair trial, correct?

6 A. Yes.

7 Q. And one of the reasons that you have to keep the materials  
8 is so that someone accused of a crime can properly  
9 cross-examine the witnesses, correct?

10 A. I will say it's correct. It's basically for trial. That's  
11 what the case is for, so when it goes to trial.

12 Q. One of the reasons you secure the evidence is so that the  
13 accused, the person who is accused of the crime has the ability  
14 to cross-examine the people who are giving testimony against  
15 him, correct?

16 MS. OKEREKE: Objection, your Honor.

17 THE COURT: If you don't know the answer, you can say  
18 so, but it does seem that somebody like yourself might well  
19 know the answer to that inquiry.

20 A. Well, sir, I keep the case for myself, so when it goes to  
21 trial so I'll be prepared.

22 THE COURT: But you're aware of the law, right, that  
23 indeed you have to turn over --

24 THE WITNESS: Everything, sir, that's correct.

25 THE COURT: I don't know about everything, but

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1 certainly everything exculpatory.

2 Q. Sir, did you testify in 2004, four years before the trial,  
3 at the time -- let me ask you, sir, you received training at  
4 the police academy as to why you have to secure handwritten  
5 notes, correct?

6 A. Sir, it was 20 years ago. I don't remember. It was more  
7 than 20 years.

8 Q. As of February 12, 2001, you had been a detective for 14  
9 years, correct?

10 A. I was a detective for 14 -- no. I was on the job for 14  
11 years.

12 Q. You were on the job for 14 years. And during those 14  
13 years you continuously did police work?

14 A. That's right.

15 Q. Sir, were you asked this question and did you give this  
16 answer at trial four years ago, page 300:

17 "Q. To preserve the ability to have a person cross-examined is  
18 one of the reasons why could have those notes, right?

19 "A. Yes."

20 Did you give that testimony --

21 A. I don't know, sir. If it's there, I gave it.

22 Q. Let me show you page 300. Beginning on line 23, going on  
23 to the next page, did you give that testimony four years ago?

24 A. It states here, but I don't remember it.

25 THE COURT: But you're not disputing -- didn't you

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1 have a chance to look at it after it was transcribed?

2 THE WITNESS: Yes, sir.

3 THE COURT: Mr. Joseph, this is not going to go on  
4 forever.

5 MR. JOSEPH: I will expedite this, Judge.

6 Q. Sir, were there also crime scene photographs that were  
7 taken of the crime scene itself?

8 A. There were photographs, yes.

9 Q. Were those photographs also lost?

10 A. Yes.

11 Q. And those photographs were also evidence, correct?

12 A. Yes.

13 Q. By the way, the box that was lost, it was approximately 13  
14 inches long and eight inches wide, correct?

15 A. I don't know the size.

16 Q. Sir, if I just direct your attention to your hearing  
17 testimony, page 40, I am going to ask if that refreshes your  
18 recollection.

19 Sir, after reviewing your hearing transcripts, do you  
20 have a recollection of whether or not the box is approximately  
21 13 inches long by eight inches wide?

22 A. Even if you're telling me now, I don't know whether that  
23 was the size or not. I never measured it.

24 Q. Did you say that's what the size was four years ago?

25 A. It says approximately.

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1 Q. And the box was full of information, correct?

2 A. Yes.

3 Q. And it also included photographs taken of Anthony  
4 Manganiello on February 12, 2001, right?

5 A. Yes.

6 Q. And those photographs were intended to document his  
7 physical condition, right?

8 A. I don't know if it was intended to do that.

9 Q. But those photographs were lost, right?

10 A. Correct.

11 Q. By the way, you also had blood test results from a Band-Aid  
12 that was removed from Anthony Manganiello's hand, correct?

13 A. I wasn't there when that happened, but there was a  
14 Band-Aid, I believe, vouchered.

15 Q. But the results of tests run on that Band-Aid were also in  
16 that box, correct?

17 A. I don't know and I don't remember whether they were in the  
18 box or not.

19 Q. Sir, where was this box the last time you saw it?

20 A. The last time I saw it was on top of, I believe, a locker  
21 room, a locker in the detective's locker room on the second  
22 floor.

23 Q. Did you ever give a different statement under oath?

24 A. Well, sir, at one point I said it was on my desk one time,  
25 but the last time that I saw it, the last time that I believe

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1       that I saw it was on top of the locker the last time.

2       Q. Sir, didn't you ever say that the last time you saw it was  
3       underneath your desk?

4       A. At one point I had it underneath my desk. I know the last  
5       time I saw it was on top of the locker in the detective's  
6       locker room.

7       Q. Did you ever attribute its disappearance to a cleaning  
8       lady?

9       A. I don't know who cleaned that out. They cleaned the whole  
10      room. I don't know who cleaned the whole room out.

11      Q. Did you ever attribute the disappearance of your file from  
12      underneath your desk to a person cleaning the squad unit?

13      A. I don't know, sir.

14      Q. Sir, at your deposition seven months ago on page 122 did we  
15      ask this question and did you give this answer:

16      "Q. When was the last time you had possession of the file?"

17      "A. The last time I saw it, it was underneath my desk. Then I  
18      came one day and the squad was like clean. It was totally  
19      cleaned and I said, what happened to all the boxes? Somebody  
20      cleaned up, they moved it next door."

21      A. That's correct.

22      Q. And it was your testimony that someone else moved the box?

23      A. That's correct.

24      Q. Did you ever testify that you put it on top of the locker?

25      A. No, I never put it on top of the locker. Let me rephrase

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1       that. One time I had the box, of course. and I was checking  
2       through the box, and then I had to put the box right back on  
3       top of the locker. When I first saw the box, the box was on  
4       top of the locker already.

5       Q. Sir, did you put the box on top of the locker?

6       A. At what point, sir?

7                  MS. OKEREKE: Objection, your Honor. These questions  
8       have been asked and answered.

9                  THE COURT: Sustained.

10      Q. Sir, at trial did you give this testimony, page 281, line  
11     24:

12      "Q. And why was it that you placed this box on top of these  
13     lockers?

14      "A. Because the original room that it was in, they were  
15     cleaning it out and they were putting boxes all over the place,  
16     so I decided to take this box and put it in a safe place."

17      A. That's correct.

18      Q. By the way, sir, during your time at the 43rd Precinct,  
19     there was a storage room, correct, where the cases were stored  
20     and indexed by year?

21      A. I don't know if it was indexed or not. I don't remember if  
22     it was indexed. I know they had cabinets, but I don't know  
23     whether they were indexed.

24      Q. Sir, this case file was never put in the cabinet, was it?

25      A. No, never.

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1 Q. That was a safe place to keep the files, correct?

2 A. But it never fit, no. It never fit in the cabinet. It was  
3 just too big of a box.

4 Q. Sir, while you were at the 43rd Precinct there was also a  
5 large storage room where the boxes were stored and indexed by  
6 year, correct?

7 A. Sir, I don't know.

8 Q. Sir, did you testify seven months ago on page 118, line 14:

9 "Q. Was there also a storage room at the 43rd Precinct at the  
10 time you were there whereby boxes related to the homicide  
11 investigations were stored by year?

12 "A. By year. There is a storage room that is stored by year,  
13 yes."

14 A. That's what I said.

15 Q. You didn't put this box in that storage room either, right?

16 A. No. It was there originally, and then they started  
17 cleaning that room out. That's why my box was there  
18 originally, in that room, and then they started cleaning  
19 everything out from the squad room, and then they started  
20 moving it all over the place. That's where it was originally.

21 Q. Sir, you never put the victim's name on the box, right?

22 A. I had my name on the box.

23 Q. Not the victim's name?

24 A. I believe I had my name and I put homicide number, whatever  
25 number it was.

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1 Q. But you didn't put Mr. Manganiello's name on it, right?

2 A. Sir, I don't remember putting his name.

3 Q. So you didn't put the victim's name or the accused's name  
4 on this file, right, just your name?

5 A. On the box, I mean?

6 Q. Sir, isn't it also true that you didn't put -- you didn't  
7 place the homicide file in the wrong box either, did you?

8 MS. OKEREKE: Objection, your Honor.

9 THE COURT: Sustained.

10 Q. Sir, a day or two after you spoke with ADA Dondes and you  
11 learned you had to release Anthony Manganiello, did you come in  
12 contact with Terrence Alston?

13 A. At one point I got in contact with Terrence Alston, yes.

14 Q. When you came into contact with Terrence Alston, was he  
15 member of any criminal organization?

16 A. Yes.

17 Q. What organization?

18 A. The Bloods.

19 Q. And you knew that when you came in contact with Mr. Alston,  
20 correct?

21 A. Yes.

22 Q. Where is it you met Mr. Alston?

23 A. In Rikers Island.

24 Q. Was Mr. Alston in fact in Rikers Island on February 12,  
25 2001?

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1 A. He probably was. I don't know.

2 Q. Sir, isn't it true that Mr. Alston had been in prison for  
3 four years before Albert Acosta was murdered?

4 A. I believe so, sir, yes.

5 Q. And isn't it unusual for a Bloods member to cooperate with  
6 the police --

7 MS. OKEREKE: Objection, your Honor.

8 Q. -- based on your experience as a detective?

9 A. Well, sir.

10 THE COURT: I'll let him answer.

11 A. Some gang members do cooperate because some members, they  
12 do cooperate, and some of them either do it for reasons, like  
13 for time, or they do it for money.

14 Q. Well, sir, did you ever testify that Mr. Alston is a gang  
15 member and they are not going to provide information to the  
16 police, they don't even like the police? Did you ever use  
17 those words?

18 A. No, sir.

19 Q. Let me show you your deposition, page 171. Directing your  
20 attention to lines 15 through 19, were these your words?

21 A. 15 to 19. Which page?

22 Q. 171.

23 A. That's 15?

24 Q. Line 15 through 19. Did you use the words that I just  
25 uttered?

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1 A. It says maybe.

2 Q. I'm sorry?

3 A. I don't know which one you're talking about.

4 Q. Sir, did you ever say that Mr. Alston -- on page 151, lines  
5 15 through 19, did you say that Mr. Alston is a Blood, he is  
6 not going to provide information to the police, Blood gang  
7 members do not like the police?

8 A. Sir, I don't remember that statement.

9 Q. Did you make it?

10 A. I don't remember.

11 Q. Sir, did you find it unusual that a Blood gang member who  
12 has been in jail for four months now has information about a  
13 murder that has occurred while he's been in jail?

14 MS. OKEREKE: Objection, your Honor.

15 THE COURT: Overruled.

16 A. Did he have some information. Some people receive that  
17 information in jail.

18 Q. Sir, the only way he could have received information while  
19 he was in jail is if someone gave it to him, correct?

20 MS. OKEREKE: Objection, your Honor, speculation.

21 THE COURT: Overruled.

22 A. I would say so, yes.

23 Q. After you met Mr. Alston did you do a background check on  
24 him?

25 A. Sir, I don't have the documents to say that I did or I

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1 didn't. I'm probably assuming I did, but I don't have the  
2 document for that.

3 Q. If you did a background check that would have been in the  
4 file, correct?

5 A. Yes.

6 Q. And isn't it a fact that the background check which you  
7 performed on Mr. Alston disappeared?

8 A. If I did one, yes.

9 Q. And, sir, the background check would contain all of  
10 Mr. Alston's criminal history, correct?

11 A. That would contain that, yes.

12 Q. By the way, did you ever ask Mr. Alston to write out his  
13 own statements about what, if anything, he knew about this  
14 Acosta homicide?

15 A. You have to show me, sir.

16 Q. Did you ever ask Terrence Alston to write out his own  
17 statement?

18 A. I don't remember.

19 Q. By the way, did Terrence Alston ever lie to you?

20 A. Yes.

21 Q. And that was before Anthony Manganiello was arrested,  
22 rearrested, on April 20, 2001?

23 A. That's correct.

24 Q. And that's before Anthony Manganiello was charged with  
25 murder, correct?

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1 A. Rephrase the question.

2 Q. Did Terrence Alston provide you with false information that  
3 implicated Anthony Manganiello before he was charged with  
4 murder in April 2001?

5 A. He did provide us with some bad information. But some of  
6 the information was good.

7 Q. Sir, prior to Mr. Manganiello being charged with murder,  
8 you knew that Alston had provided you false information,  
9 correct?

10 A. Yes.

11 Q. Sir, as a result of that false information, did you have  
12 doubts as to whether Terrence Alston was believable?

13 A. Was he believable or -- I didn't know whether he was  
14 believable or not believable.

15 Q. You didn't know?

16 A. No.

17 Q. In your own mind, before you accused Anthony Manganiello of  
18 murder -- let me withdraw that.

19 Sir, did you sign a felony complaint? Sir, did you  
20 sign a felony complaint charging Anthony Manganiello with the  
21 crime of murder arising out of the death of Albert Acosta?

22 A. Yes.

23 MS. OKEREKE: Objection, your Honor.

24 THE COURT: Overruled.

25 Q. Before you signed that felony complaint did you have doubts

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1 as to the believability of Terrence Alston?

2 A. No, sir.

3 Q. You didn't?

4 A. No, sir.

5 Q. Sir, let me ask you, seven months ago in your deposition  
6 were you asked this question and did you give this answer, on  
7 page 151, line 16:

8 "Q. Did that raise any suspicion on your part whether  
9 Mr. Alston was believable?

10 "A. Like I said, I had my differences with him, okay. You  
11 know, he has somebody, I'm trying to look for this body, and he  
12 says, I'll give it to you in four weeks or whatever. I had my  
13 doubts with him, yes."

14 A. That was for that part. For the part before, he was  
15 arrested for murder. There was a different part to that, so I  
16 need to be specific.

17 Q. Well, sir, did the fact that Terrence Alston provided you  
18 with false information cause you to have doubts as to whether  
19 he was believable before you signed a felony complaint charging  
20 Anthony Manganiello with murder?

21 A. He gave me false information at once, but then he gave me  
22 the right information for the second time.

23 Q. We will get to that in a couple of seconds, sir.

24 Isn't it true that if you get bad information from an  
25 informant you're supposed to drop him?

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1 A. Sir, I don't have --

2 MS. OKEREKE: Objection, your Honor.

3 THE COURT: It's interesting, isn't it. I don't know  
4 the answer. Is there an operating procedure --

5 THE WITNESS: Sir, he wasn't my informant.

6 THE COURT: Just for academic purposes.

7 THE WITNESS: Most informants, you don't drop them the  
8 first time they give you bad information. If they keep doing  
9 it and they keep doing it, then you drop them.

10 THE COURT: Then you make your own decision.

11 THE WITNESS: You make your own decision whether he's  
12 worth it or not worth it.

13 Q. Did you ever testify differently?

14 A. I don't know.

15 Q. Sir, in your deposition seven months ago on page 17,  
16 beginning on line 23 were you asked these questions and did you  
17 give these answers:

18 "Q. In your experience, sir, working with confidential  
19 informants, was there any procedure by which you put up a red  
20 flag, so to speak, if it turned out that a confidential  
21 informant had given you false information?"

22 "A. Basically, if he gives you once or twice bad information,  
23 what your supervisor would say is drop him, you just drop him,  
24 that's it. He won't be your confidential informant anymore."

25 You were also asked this question on page 18. Did you

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1 make those statements, sir?

2 A. That's correct.

3 Q. And on page 18 were you also asked this question: Was that  
4 a procedure -- page 18, line 18:

5 "Q. Was that a procedure that you would follow in the event  
6 that a confidential informant gave you false information?

7 "A. Yes."

8 A. Yes.

9 Q. Mr. Alston gave you false information, correct?

10 A. But he wasn't my confidential informer.

11 Q. Did you continue to rely on what Mr. Alston was saying to  
12 commence prosecution against Anthony Manganiello?

13 MS. OKEREKE: Objection, your Honor.

14 THE COURT: I think we have your drift, Mr. Joseph.  
15 We will sustain the objection.

16 Q. Sir, did Mr. Alston tell you that a friend of his named  
17 Johnny Baker sold plaintiff a .22 caliber gun?

18 A. No. He told me a Johnny sold. He never said Johnny Baker.

19 Q. Sir, did Mr. Alston tell you that a friend of his named  
20 Johnny sold Anthony Manganiello a .22 caliber gun?

21 A. Yes.

22 Q. And that's the same caliber of gun that was used to kill  
23 Albert Acosta, correct?

24 A. That's correct.

25 Q. And you found this person who was named Johnny, right?

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1 A. I found the Johnny, yes.

2 Q. And Johnny told you it was a lie, right?

3 A. I remember -- I remember the results that it was a lie, but  
4 I don't remember the actual conversation with this Johnny  
5 Baker. I really don't.

6 Q. And you believed Johnny Baker when he told you that Alston  
7 was lying, correct?

8 A. I believe that it was a lie, yes.

9 Q. And he had no reason not to believe Johnny Baker, right?

10 A. I don't remember this Johnny Baker, but I know I  
11 interviewed a Johnny and I believed it to be a lie, yes.

12 Q. And what Mr. Alston had done at that point is he had  
13 falsely accused Anthony Manganiello of purchasing the same  
14 caliber of gun used in the Acosta shooting months before the  
15 shooting occurred, correct?

16 A. No, that's not what he was saying. That's not what he was  
17 implicating, no.

18 Q. Sir, the statement that Anthony Manganiello bought a gun  
19 from Johnny Baker months before the Acosta shooting was false,  
20 right?

21 A. Correct.

22 Q. So he lied about Anthony Manganiello buying a gun of the  
23 same caliber prior to the shooting occurring, correct?

24 MS. OKEREKE: Objection, your Honor.

25 THE COURT: Overruled.

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1 A. No. He lied about Johnny Baker selling the gun to Anthony  
2 Manganiello.

3 Q. By the way, owning a gun at that point in time, in 2001, it  
4 was a felony, right?

5 A. That's correct.

6 Q. What Mr. Alston had done, in effect, was to falsely accuse  
7 Johnny Baker of a felony?

8 MS. OKEREKE: Objection, your Honor.

9 THE COURT: Overruled. You can answer.

10 A. Sir, I don't know. There is no complaint.

11 Q. And from the information you had, Mr. Baker was innocent,  
12 correct?

13 A. I believe this person Johnny was telling me the truth that  
14 he didn't sell the gun.

15 Q. And you confronted Alston about him lying, correct?

16 A. That's correct.

17 Q. And isn't it true that Mr. Alston did not want you to  
18 interview witnesses that he was bringing forward without him  
19 being present?

20 A. That's correct.

21 Q. And did it ever raise a suspicion in your mind that  
22 Mr. Alston was trying to influence witness testimony or witness  
23 statements?

24 A. No, sir. I think he was trying to negotiate that he wanted  
25 to get out of jail before he would tell me the right person who

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1 he knows sold the gun. He was trying to negotiate. He wanted  
2 to get out.

3 Q. Sir, isn't it also true that you didn't create any  
4 paperwork that documented that Terrence Alston didn't want you  
5 interviewing witnesses without him being present?

6 A. That's correct.

7 Q. If such a paper had been created, that would have  
8 undermined Terrence Alston's credibility, right?

9 A. No, sir.

10 MS. OKEREKE: Objection.

11 MR. JOSEPH: Judge, is there a ruling?

12 THE COURT: I didn't hear an objection. Was there an  
13 objection?

14 MS. OKEREKE: Yes, your Honor.

15 THE COURT: The grounds were?

16 MS. OKEREKE: The form of the question, your Honor.

17 THE COURT: Overruled. Anyhow, he answered.

18 MR. JOSEPH: I didn't hear an answer, Judge.

19 THE COURT: He said no, sir.

20 A. It's regarding if I did paperwork on the conversation. Is  
21 that the question?

22 Q. No, sir, not the question. The question was, if you  
23 created paperwork that showed that Mr. Alston had to be present  
24 before he would let you interview a witness that he produced,  
25 wouldn't that tend to undermine his believability?

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1 A. But I did create paperwork, I believe, didn't I?

2 Q. Sir, didn't you tell us a few minutes ago that you never  
3 created any paperwork that documented Mr. Alston wanted to be  
4 present when you were interviewing witnesses that he produced?

5 A. I never did paperwork for that conversation.

6 Q. And if you never did paperwork for that conversation --  
7 strike that.

8 By the way, did you ever tell the assistant district  
9 attorney involved in this case that Mr. Alston had to be  
10 present when he produced a witness?

11 A. Sir, I don't remember whether I told them that. I do  
12 remember that I kept them abreast of everything in this  
13 investigation, even the conversations I had with Terrence  
14 Alston.

15 THE COURT: Do you know what Alston was in Rikers for?

16 THE WITNESS: I don't know what he was in there for.

17 Q. Sir, isn't it also true that Mr. Alston would find you  
18 another witness, but it would take him four weeks?

19 A. No, sir, he didn't say that.

20 Q. Sir, on page 151 of your deposition, line 16:

21 "Q. Did that raise any suspicions on your part whether  
22 Mr. Alston was believable?

23 "A. Like I said, I had my differences with him, okay. He has  
24 this body and I'm trying to look for this body and he says, I  
25 will give it to you in four weeks or whatever. I had my doubts

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1 with him, yes."

2 Isn't that what you testified to, sir?

3 A. Sir, what I'm telling you is, he told me that he has the  
4 person who sold the gun and when I get out I will give you the  
5 person. That's what he was saying, not that he was going to  
6 find a witness like from the street to do it. He says, I have  
7 the person, but I'll give it to you when I get out.

8 Q. Sir, isn't that, in fact, what he did, he found a person  
9 from the street?

10 A. I don't know.

11 Q. Sir, Mr. Alston was let out of jail in exchange for his  
12 cooperation in this matter, right?

13 A. I don't know, sir.

14 Q. You don't?

15 A. No.

16 Q. Sir, beginning on your deposition, on page 182, line 16,  
17 were you asked these questions and did you give these answer --  
18 QUESTION-- strike that.

19 Wasn't it true that in your opinion at the time,  
20 Mr. Alston was playing games to get out of jail?

21 A. I wouldn't say playing games. I know that he was probably  
22 trying to negotiate. I know if I was in jail I would  
23 negotiate, too. I wouldn't give you a witness if I'm still in  
24 jail.

25 Q. Sir, did you ever use the words that Mr. Alston was playing

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1 games?

2 A. Sir, I don't remember using those words.

3 Q. Sir, let me ask you these questions. Seven months ago at  
4 your deposition on page 182, line 5:5 "Q. Whatever was said in the conversation between you and  
6 Mr. Alston, did that, in your view, tend to undermine  
7 Mr. Alston's credibility?8 "A. Somewhat, but I know he was playing games because he was  
9 in jail and maybe he wanted to be out of jail before he gave me  
10 like the correct person who did it, so he was playing games.  
11 To me, he was playing games."

12 Did you give that testimony?

13 A. Sir, if that's what's there, yes. You're asking me today.  
14 I don't remember giving that testimony.15 Q. By playing games, he means he will provide information if  
16 you get him out of jail, right?17 A. To me, he wanted to get out of jail first, and then he was  
18 going to give us the person who stole the gun.19 Q. But he couldn't give you the name of someone who stole the  
20 gun until he was let out of jail?

21 A. That his reasoning, yes.

22 Q. One of the names of the persons he did give you while he  
23 was in jail turned out to be a lie?

24 A. That is correct.

25 Q. By the way, did you create any written record that Terrence

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1 Alston was playing games to get out of jail?

2 A. Not that I remember, no.

3 Q. Was that ever put in any of your DD5s?

4 A. Sir, not that I remember, no.

5 Q. If it had been put in your DD5s, you know it would had to  
6 have been turned over to Mr. Manganiello's criminal defense  
7 lawyers, right?

8 A. The only thing I could think of was the so-called interview  
9 with Johnny that stated he's not the person. That would  
10 contradict what Terrence Alston was telling me. That does  
11 contradict. There was paperwork that was contradicting  
12 Terrence Alston.

13 Q. By the way, Johnny Baker wrote out his own witness  
14 statement, right?

15 A. Like I told you, I don't remember the actual interview, but  
16 I know I spoke to a Johnny, but I don't remember this Johnny  
17 Baker.

18 Q. Sir, let me ask you this.

19 MR. JOSEPH: I ask to move Exhibit 10 into evidence.

20 Judge, I ask to move Exhibit 24 into evidence. I  
21 don't think there is an objection.

22 (Plaintiff's Exhibit 24 received in evidence)

23 Q. Sir, I am going to show you Exhibit 24. Do you recognize  
24 this?

25 A. Yes, sir.

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1 Q. That's a felony complaint, right?

2 A. That's correct.

3 Q. That's a felony complaint you signed, correct?

4 A. Correct.

5 Q. Felony complaint you signed accusing Anthony Manganiello of  
6 murder arising out of the death of Albert Acosta, correct?

7 A. Correct.

8 MR. JOSEPH: Your Honor, I offer a copy of Exhibit 10  
9 that's premarked into evidence.

10 (Plaintiff's Exhibit 10 received in evidence)

11 Q. Sir, Exhibit 10 you created, correct?

12 A. Yes, sir, I created it.

13 Q. And according to Exhibit 10, Johnny Baker wrote out his own  
14 handwritten statement?

15 A. According to the statement, yes.

16 Q. Did that statement disappear?

17 A. Yes.

18 Q. Sir, did you ever tell the district attorney that  
19 Mr. Alston was playing games to get out of jail?

20 MS. OKEREKE: Objection, your Honor.

21 THE COURT: Sustained.

22 Q. Sir, in fact, was Mr. Alston let out of jail before Anthony  
23 Manganiello was rearrested in April 2001?

24 A. I believe he was out of jail.

25 Q. And he was let out of jail for his cooperation, correct?

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1 A. Well, sir, I had nothing to do with letting him out of  
2 jail.

3 Q. I'm asking what your knowledge is, sir.

4 A. I have none.

5 Q. Sir, after Mr. Alston was let out of jail another gentleman  
6 comes into the picture named Mark Damon, is that correct?

7 A. That's correct.

8 Q. Mark Damon was 17 years old, correct?

9 A. You have to show me the DD5.

10 Q. And, sir, after Johnny Baker told you he didn't sell  
11 Anthony Manganiello a .22 caliber gun, now, all of a sudden,  
12 Terrence Alston produces Mark Damon, correct?

13 A. That's correct.

14 Q. Mark Damon says he sold Anthony Manganiello a .22 caliber  
15 gun months before the Acosta murder, correct?

16 A. He didn't mention Anthony Manganiello. He didn't mention  
17 his name.

18 Q. He mentioned he sold a .22 caliber gun to a white male  
19 Italian security guard, right?

20 A. I have to look at the DD5 before I could answer that.

21 THE COURT: When you find a good time to pause, we  
22 will take a recess.

23 MR. JOSEPH: I have a copy right here. I will use the  
24 copy which is also marked. I offer Exhibit 23 in evidence.

25 (Plaintiff's Exhibit 23 received in evidence)

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1 Q. Sir, I show I Exhibit 23. You recognize Exhibit 23?

2 A. Yes, I do.

3 Q. What do you recognize it to be?

4 A. It's the interview with Mark Damon.

5 Q. That's an interview you did, right?

6 A. It was the interview that I attended, yes.

7 Q. By the way, who else attended this interview?

8 A. It was Detective Derrick Parker, ADA Scaccia, and also, not  
9 necessarily in the interview, but present was Terrence Alston.

10 Q. Terrence Alston was there when Mark Damon was interviewed,  
11 is that right?

12 A. No, not while he was interviewed, no, sir.

13 Q. Terrence Alston appeared at the district attorney's office  
14 with Mark Damon, correct?

15 A. Yes. They appeared at the district attorney's office.

16 Q. At this point in time Terrence Alston is out of jail?

17 A. He's out of jail, yes.

18 Q. By the way, looking at Exhibit 23, does that refresh your  
19 recollection as to how old Mr. Damon was at the time?

20 A. Yes. 17.

21 Q. Were his parents there?

22 A. No, sir.

23 Q. Mr. Alston was quite a bit older than Mr. Damon, correct?

24 A. I don't know -- yeah, he was older.

25 MS. OKEREKE: Objection, your Honor.

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1                   THE COURT: Sustained.

2 Q. Sir, Mr. Damon now accused Anthony Manganiello of  
3 purchasing a .22 caliber gun, correct?

4                   MS. OKEREKE: Objection, your Honor.

5                   THE COURT: Sustained.

6 Q. Sir, did Mr. Damon ever admit that he lied?

7 A. Yes.

8 Q. And did Mr. Damon ever admit to you why he lied?

9 A. He didn't admit to me why he lied. I believe the district  
10 attorney's office was interviewing him and I was present.

11 Q. In your presence did he ever say why he lied?

12 A. Yes.

13 Q. Why did he lie?

14 A. I don't remember exactly, so I am not going to guess at  
15 what he said. I just don't remember what he said.

16 Q. Sir, did you remember seven months ago?

17 A. I don't know. I don't remember.

18 Q. Sir, let me ask you. Page 193 of your deposition, line 20:

19 "Q. Did he recant in your presence?

20 "A. I recanted to them first and then I sat down with the  
21 investigator, and he said that Murdock, whatever, Alston, made  
22 him say it."

23 A. That's probably correct.

24 Q. By the way, when you interviewed Mark Damon -- strike that.

25                   The interview that's reflected in Exhibit 23, did you

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1 ever ask Mark Damon where he got the gun from?

2 A. I wasn't conducting the interview.

3 Q. In fact, sir, you didn't speak to Mark Damon at all?

4 A. That's correct.

5 Q. That's because Mr. Alston didn't want you to speak to him?

6 A. I wasn't doing the interview. I wasn't conducting the  
7 interview. I was just there listening.

8 THE COURT: Did you hear my earlier comment, Mr.  
9 Joseph?

10 MR. JOSEPH: No, I did not, your Honor.

11 THE COURT: Whenever you're at a resting place, we  
12 will take a recess.

13 MR. JOSEPH: I have one more question and we can take  
14 a recess. I didn't hear that. I apologize to the Court.

15 THE COURT: That's all right.

16 Q. Sir, did you ever give testimony that you did not talk to  
17 Mr. Damon?

18 A. I don't know, sir. I don't remember talking to him or  
19 giving testimony that I had spoken to him or not spoken to him.

20 Q. Sir, on page 197 of your deposition were you asked the  
21 following questions and did you give the following answers,  
22 starting on line 21:

23 "Q. By the way, did you ask Mr. Damon, the 17-year-old kid,  
24 how he came in possession of a firearm?

25 "A. Sir, I didn't talk to him."

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1                   Were you asked that question and did you give that  
2 answer?

3       A. Yes, I gave that answer.

4       Q. Sir, continuing on page 198:

5       "Q. You were there in the DA's office?

6       "A. Yes. And I didn't talk to him, you know, what this guy --  
7 this Alston guy didn't want me to talk to him, so it was like  
8 ADA, Derrick Parker, and the kid, and I didn't ask him any  
9 questions. I just listened."

10                  Did you give that testimony?

11       A. Yes.

12       Q. Sir, you were the lead investigator on this case, not  
13 Terrence Alston?

14                  MS. OKEREKE: Objection, your Honor.

15                  THE COURT: Sustained.

16                  MR. JOSEPH: This is an appropriate resting point.

17                  THE COURT: Ladies and gentlemen, we will take a  
18 ten-minute recess and we will come back at or about 3:30.

19                  (Jury not present)

20                  THE COURT: Mr. Joseph, you have 15 minutes for this  
21 witness. You should use it any way you want, and here is what  
22 I think you can ask the brother. Actually, I would have  
23 preferred the stipulation I originally thought we might put  
24 together, but my guess is you never even bothered to talk to  
25 Corp. Counsel. So I have written out the way in which you can

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1 get the answer because you're leading him into it. It's  
2 exactly what he said in some former document or what he said.

3 MR. JOSEPH: Very well, your Honor.

4 MR. ZUCKERMAN: Can I see what he has.

5 (Recess)

6 (Jury present)

7 THE COURT: This direct, by the way, is going to be  
8 over in 15 minutes in case you thought it might never end.

9 MR. JOSEPH: May I proceed, your Honor?

10 THE COURT: You may.

11 BY MR. JOSEPH:

12 Q. Sir, did Terrence Alston ever tell you that a security  
13 guard hired him to kill another security guard?

14 A. Hired him?

15 Q. Correct.

16 A. There were talks of killing another security guard, yes,  
17 but as far as the hiring part, no.

18 Q. Did Mr. Alston ever say to you that a Parkchester security  
19 guard wanted him to commit a murder?

20 A. Yes.

21 Q. Sir, did you testify at your deposition seven months ago on  
22 page 212, line 6:

23 "Q. Now, did you testify a couple of seconds ago that  
24 Mr. Alston never said to you that a Parkchester security guard  
25 wanted to hire him to commit a murder?"

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1 "A. He never said that to me.

2 "Q. He never did?

3 "A. No."

4 Did you give that testimony.

5 A. That was --

6 THE COURT: It's a yes or no question.

7 A. Do I remember the testimony, no, I don't remember the  
8 testimony.

9 Q. Did you give that testimony?

10 A. I don't remember the testimony.

11 THE COURT: You want to look at it to see if that  
12 helps you?

13 THE WITNESS: Yes, sir.

14 Q. 212.

15 THE COURT: I don't think anybody is arguing about the  
16 veracity of the deposition language, but you're welcome to tell  
17 us you never said that.

18 THE WITNESS: Sure.

19 THE COURT: Just a couple of lines, Mr. Agostini.

20 A. Sir, that's what it says here, but I don't remember this.

21 Q. Sir, did you also create Exhibit No. 22, which is right in  
22 front of you, next to those cups?

23 A. Yes.

24 Q. Sir, did you testify at a pretrial hearing on June 18, 2004  
25 and did you give the following -- did you ever testify that you

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1 found a note in plaintiff's locker?

2 A. I know I found a note, but I am not sure why I don't  
3 remember where I found it at.

4 THE COURT: You found it in his locker, you just said?

5 THE WITNESS: No, sir. I said I know I found a note.

6 THE COURT: You don't know where.

7 THE WITNESS: I don't know where, whether it was the  
8 locker or somewhere else.

9 Q. But it was a note that you attributed to the plaintiff  
10 having?

11 A. Yes.

12 Q. Did you testify at a pretrial hearing on June 18, 2004 that  
13 the note said, I feel like killing somebody?

14 A. Yes.

15 MR. JOSEPH: Your Honor, at this point I would ask to  
16 move into evidence Exhibit 16.

17 THE COURT: Very well. With no objection, it will be.

18 (Plaintiff's Exhibit 16 received in evidence)

19 Q. Exhibit 16 is the note, is it not?

20 A. Yes, sir.

21 Q. And it doesn't say I feel like killing somebody?

22 A. No, sir.

23 Q. In fact it says: I pray every day I will never have to  
24 kill somebody, correct?

25 A. Kill someone.

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1 Q. I pray every day that I will never have to kill someone.  
2 That's what the note says?

3 A. Yes.

4 Q. Did you ever correct the testimony that you gave to the  
5 court in June 2004?

6 A. Sir, when I gave my testimony I didn't have this piece of  
7 paper in front of me. I basically testified out of memory.  
8 Just like you, you messed up, when you said something else.

9 Q. Sir, you were present when an attorney named Richard Ross  
10 appeared for Anthony Manganiello at the 43rd Precinct on  
11 February 12, 2001, correct?

12 A. Correct.

13 Q. And did you testify at a pretrial hearing that Mr. Ross  
14 exited the interview room and said to you, quote unquote, was  
15 it intentional?

16 A. He didn't say it to me. I was present -- I believe it was  
17 me and someone else.

18 Q. Did you testify that Mr. Ross made that statement when he  
19 left the interview room?

20 A. The statement was it intentional, yes, that's correct.

21 Q. You gave that testimony under oath, right?

22 A. I don't know whether I gave that testimony.

23 Q. Sir, did you give that testimony on June 21, 2004?

24 A. Sir, I don't know.

25 THE COURT: I'll take judicial notice that he did.

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1       And the Corporation Counsel, I assume, will join me, if he has  
2       that power.

3       Q. Sir, a couple of weeks after you found out that Mr. Alston  
4       lied about Mr. Baker, you met with a gentleman named Michael  
5       Booth, right?

6       A. Yes.

7       Q. And Richard Martinez was with you?

8       A. I believe so, yes.

9       Q. You saw him in front of a pizzeria, correct?

10      A. He came inside the pizzeria.

11      Q. You saw him around a pizzeria, right?

12      A. Yes.

13      Q. And you had some information that Mr. Booth was engaged in  
14       criminal activity, correct?

15      A. I don't know. I don't know how to answer criminal  
16       activity.

17      Q. Did you have any information that he was in any way  
18       affiliated with organized crime?

19      A. That he was -- if I could see the DD5. Can I see the DD5?

20      Q. I'll show you what's been marked in evidence as Exhibit 41.  
21       By the way, sir, you created this document, right, the first  
22       page of it, it's a three-page document?

23      A. This is not the DD5 I'm looking for.

24      Q. Is that the DD5 for Mr. Booth?

25      A. No. For Chris Tartone. I'm looking for just to let you

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Agostini - direct

1 know whether -- whether he's affiliated with organized crime.

2 Q. Sir, do you have any recollection of whether Mr. Booth was  
3 a bookie?

4 A. I don't know whether they said a bookie or the neighborhood  
5 loan shark or something like that, but it wasn't -- I don't  
6 believe it was a bookie, no.

7 Q. It was one of the two?

8 A. It was something like that. I have to look at the DD5.

9 Q. Both of those activities are illegal, right?

10 A. Yes.

11 Q. And after you met with Mr. Booth you did a background  
12 check, right?

13 MS. OKEREKE: Objection, your Honor. I believe there  
14 was a motion in limine regarding this issue.

15 THE COURT: I don't want to go any further. I assume  
16 you listened to what we read out to you in the motions in  
17 limine, right?

18 MR. JOSEPH: Judge, I don't believe this was precluded  
19 in any motions in limine.

20 THE COURT: This seems to me this was part of one. I  
21 don't want to go any further, in any event.

22 Q. Sir, let me ask you this. Did you search Mr. Booth when he  
23 arrived at the proceeding sing?

24 A. He arrived at the precinct.

25 MS. OKEREKE: Your Honor, this is along the same vain

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Agostini - direct

1 of questions.

2 MR. JOSEPH: Judge, I believe the Court -- I believe  
3 this is what the Court allowed me to ask, specifically this one  
4 individual, but not others.5 MS. OKEREKE: No, your Honor. I believe that's not  
6 what the Court ruled.

7 THE COURT: You remember the number?

8 MR. ZUCKERMAN: Point number 10, your Honor, in  
9 defendants' motion in limine.

10 MR. JOSEPH: Which I believe --

11 THE COURT: Actually, the way it worked out is, the  
12 motion was granted as to Alston and that means it was excluded  
13 and denied as to Booth, which meant it was admitted. So it was  
14 defendants' motion to exclude evidence with respect to both of  
15 them. So it would seem to me that although if you go down and  
16 see what the rationale was, in terms of Alston and what he told  
17 the defendant --18 MS. OKEREKE: Your Honor, I apologize. May the  
19 parties have a side bar?20 THE COURT: No. We are certainly not going to do  
21 that. I thought I made that clear at the outset.22 MR. JOSEPH: Judge, my notes reflect that it was  
23 denied as to Booth.

24 THE COURT: I think that's true.

25 MR. JOSEPH: That would mean I'm allowed to ask these

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Agostini - direct

1 questions that I'm asking.

2 THE COURT: It seems that way to me. I'll allow it.

3 MR. JOSEPH: Can I have the last question read?

4 I'll withdraw it.

5 Q. Sir, when Mr. Booth arrived at the police station at the  
6 43rd Precinct, you and Detective Martinez brought him back to  
7 the police station, correct?

8 A. That's correct.

9 Q. At some point you searched Mr. Booth, correct?

10 A. At some point, yes.

11 Q. And Mr. Booth was reluctant to talk to you, was he not?

12 A. Yes.

13 Q. When you searched him you found betting slips in his  
14 pocket, correct?

15 A. I don't know if they were betting slips.

16 Q. Did you find slips with a bunch of names and amounts,  
17 numerical numbers?

18 A. There were names, yes, names and numbers.

19 Q. Sir, did you consider that to be evidence of criminal  
20 activity?

21 A. Well, sir, I have never seen a betting slip before.

22 Q. Really. Did you also find a knife on him?

23 A. Yes.

24 Q. Sir, were you asked these questions and did you give these  
25 answers at your deposition seven months ago, page 222, line 18:

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Agostini - direct

1        "Q. Did you tell him that you would pass his name onto  
2 organized crime?

3        "A. Yes, I would, yes, I did."

4              21: "Why did you say that?

5        "A. Because he had these betting slips in the back of his  
6 pocket."

7              Is that your testimony, sir.

8        A. That's the testimony, yes, but I didn't know whether they  
9 were betting slips or not. They were names and numbers. I  
10 have never seen a betting slip before.

11      Q. Seven months ago you knew they were betting slips, right?

12      A. I didn't know they were betting slips.

13              MS. OKEREKE: Objection, your Honor.

14              THE COURT: Let me clarify how you may have  
15 misunderstood the ruling with respect to the motion in limine,  
16 but the bottom line is that the evidence with respect to Booth  
17 and the fact that he had not been arrested was something I  
18 found to be relevant, and I can tell you why, but in fact  
19 that's partially the way I came out with respect to this and  
20 differently with respect to Alston. But I could give you the  
21 decision since I wrote something on every one of your 19  
22 motions.

23              Go ahead.

24      Q. And, sir, did you say to Booth after you threatened to pass  
25 his name onto organized crime, I have some information from

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1       somebody that a Parkchester security officer approached you  
2 with purchasing a gun?

3       A. I said that before searching.

4           MS. OKEREKE: Your Honor, defendants note for the  
5 record their objection to this line of questioning.

6           THE COURT: You only have about five more minutes.

7       Q. Sir, you said that, right? Then you searched him, correct?

8       A. Right.

9       Q. Then you found betting slips and a knife, right?

10      A. I saw names and numbers and he had a knife on him.

11      Q. That's when you threatened to pass his name onto organized  
12 crime?

13           MS. OKEREKE: Objection.

14           THE COURT: Overruled.

15      A. There were no threats. I told him that I was going --

16           THE COURT: I really only want the information with  
17 respect to the arrest. I really don't want the gory details.

18      Q. Sir, Mr. Booth then signed a statement implicating Anthony  
19 Manganiello, correct?

20      A. Yes.

21      Q. And he signed a statement which is in Exhibit 41 which says  
22 that Anthony Manganiello approached him to buy a gun, right?

23      A. He said a rod.

24      Q. You understood a rod to mean a gun?

25      A. Yes.

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Agostini - direct

1 Q. After he signed that statement, he gave Mr. Booth back the  
2 knife?

3 A. Correct.

4 Q. And he walked out of the station house?

5 A. Yes.

6 Q. And the gambling slips disappeared, right?

7 A. They were with my box.

8 Q. In the box that disappeared, right?

9 A. That's correct.

10 Q. And the gambling slips disappeared with the box, yes?

11 MS. OKEREKE: Objection, your Honor.

12 THE COURT: Overruled.

13 A. I don't know if they are gambling slips. They are a slip.  
14 The names of the numbers with the slip, they disappeared.

15 Q. Mr. Booth was never charged -- strike that.

16 After he signed this statement you never passed  
17 Mr. Booth's name onto organized crime, right?

18 A. I don't believe I did.

19 Q. And Mr. Booth was never arrested after he signed that  
20 statement, right?

21 MS. OKEREKE: Objection, again, to this line of  
22 questioning, your Honor.

23 THE COURT: Overruled. You have an objection to the  
24 line. You don't have to stand up and give him less time every  
25 few minutes while he asks questions, which he has a few minutes

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Agostini - direct

1 left to do.

2 MS. OKEREKE: Thank you, your Honor.

3 THE COURT: You're very welcome.

4 Q. Sir, isn't it true that Mr. Booth was never arrested after  
5 he signed that statement implicating Anthony Manganiello?

6 A. He was never arrested.

7 Q. And those gambling slips never made their way to the  
8 assistant district attorney's office, did they?

9 A. The slips were in the box.

10 Q. And, sir, to get an arrest warrant you went before a judge,  
11 yes?

12 A. Yes.

13 Q. And you told the judge what evidence you had, right, what  
14 statements you had from what witnesses, correct?

15 A. I don't remember the conversation I had with the judge.

16 Q. But you had to go before a judge and give information to  
17 get an arrest warrant?

18 A. That's correct.

19 Q. Did you tell that judge that you threatened to pass Michael  
20 Booth's name onto organized crime?

21 A. I just told you I don't remember what I told the judge.

22 Q. But did you tell the judge that Alston had lied to you?

23 A. I don't remember what I told the judge.

24 Q. Did you ever tell the judge that Mr. Booth was never  
25 arrested even though you found criminal evidence on him?

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Agostini - direct

1 A. I never -- I don't remember the conversation I had with the  
2 judge.

3 MR. JOSEPH: Judge, I believe that's all I have.

4 Thank you, your Honor.

5 THE COURT: Do you have any cross?

6 MS. OKEREKE: Yes, your Honor.

7 THE COURT: While you're getting warmed up, let me  
8 just reread to you what this case is about because sometimes I  
9 seem to lose track myself. This isn't all that you'll hear but  
10 it gives you some feeling.

11 That the plaintiff to prevail on a claim of malicious  
12 prosecution must establish four elements: First, the plaintiff  
13 must prove that the defendant initiated a criminal proceeding;  
14 second, the proceeding must have been terminated favorably to  
15 the plaintiff; third, the plaintiff must prove that there was  
16 no probable cause for the criminal charge; and, finally, the  
17 defendant must have acted maliciously.

18 I think if you keep your eye on those four balls and  
19 the lawyers as well, we will all do swimmingly. That concerns  
20 not only direct but cross-examination.

21 MS. OKEREKE: If I may proceed, your Honor.

22 THE COURT: You may.

23 (Continued on next page)

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Agostini - direct

1 || CROSS-EXAMINATION

2 BY MS. OKEREKE:

3 Q. Now, Detective Agostini, there has been discussion of a  
4 case file. At any point after the plaintiff was arrested did  
5 you provide the district attorney with the case file regarding  
6 the Albert Acosta investigation?

7 A. The case file was in a box. The whole box I provided them.

8 Q. And at what point did you give the district attorney this  
9 case file or this box?

10 A. I believe it was after the arrest.

11 Q. Were all the documents relating to the investigation in the  
12 case file in this box at the time you gave the file to the  
13 district attorney?

14 A. Yes.

15 Q. Was it your belief that everything you had regarding the  
16 investigation was in the file at the time you gave it to the  
17 DA?

18 MR. JOSEPH: Objection, leading

19 THE COURT: Sustained

20 Q. What was in the box at the time that you gave the file to  
21 the district attorney?

22 A. Basically, everything that I did in the investigation of  
23 the homicide was in that box.

24 Q. Did the DA return the file to you?

25 A. Yes.

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Agostini - cross

1 Q. And when did the DA return the file to you?

2 A. I'm not sure. Could have been two or three weeks later.

3 I'm not sure of the time after I dropped it off.

4 Q. What did you do with the file after the district attorney  
5 returned it to you?

6 A. I brought it back to the 43 squad.

7 Q. And at some point were you reassigned to another precinct?

8 A. Yes.

9 Q. And when was that?

10 A. February of 2003, until February of 2004, I was transferred  
11 to the deputy commissioner's office.

12 Q. And at the time that you were reassigned, was the Albert  
13 Acosta case still assigned to you?

14 A. Rephrase it, please.

15 Q. At the time that you were reassigned to another precinct,  
16 were you still handling the homicide investigation?

17 A. I was still handling, yes. It's my case.

18 Q. Were you responsible for tracking the whereabouts of where  
19 the case file was in the 43rd Precinct?

20 A. No, ma'am.

21 Q. Did there come a time when you later attempted to find the  
22 case file?

23 A. Yes, ma'am.

24 Q. When was this?

25 A. This was after I had a conversation with ADA Scaccia, and

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Agostini - cross

1       she said that the case was going to trial, I believe she said  
2       something like in June. And at that point I started looking  
3       for the case.

4       Q. Again, you were looking for the case because the trial was  
5       coming up?

6       A. Yes.

7       Q. Did anyone else try to find the case file?

8       A. Yes.

9       Q. And who else tried to find the case file?

10      A. I believe ADA Scaccia came herself to the precinct and  
11       looked for the file.

12      Q. And how long did you look for the file?

13      A. I looked for the file for like three or four days.

14      Q. How long did ADA Scaccia look for the file?

15      A. I am not sure. You have to ask her.

16      Q. But she did attempt to try and obtain --

17      A. I believe she did. She told me that, yes.

18      Q. Were you eventually able to find this case file?

19      A. No.

20      Q. And why is that?

21      A. They had moved it.

22      Q. Who had moved it?

23      A. I don't know. I don't know who moved it.

24      Q. Were you given any indication or any reason by any  
25       individual at the 43rd Precinct why the case file may not have

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Agostini - cross

1 been --

2 MR. JOSEPH: Objection, hearsay.

3 THE COURT: If you know what transpired. You've  
4 already testified that they were renovating the area. I  
5 suppose that's fair.6 THE WITNESS: Yes. The room where the box was on top  
7 of a locker used to be a detective locker room. When I was  
8 transferred and came back, it was an auxiliary room. They  
9 totally changed the whole room.10 Q. At the time that you were assigned to the 43rd Precinct,  
11 approximately how many boxes were kept in this locker room?

12 A. There were various boxes.

13 Q. And how many boxes total would you estimate were held at  
14 the 43rd Precinct?

15 A. At that room, you mean?

16 Q. In the 43rd Precinct.

17 A. A whole bunch of boxes.

18 THE COURT: What are these boxes, are they just  
19 cardboard boxes that you get out of the supermarket?20 THE WITNESS: It's like those boxes that they keep  
21 cases in.22 THE COURT: I can't see them, but I presume the jury  
23 can figure it out.24 THE WITNESS: Just like a cardboard box like this, and  
25 you keep documents in them. There was, I would say, hundreds

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Agostini - cross

1 of boxes that I looked through in the 43rd Precinct for this  
2 case.

3 Q. Hundreds of boxes when you were attempting to find the case  
4 file for this case?

5 A. Yes.

6 Q. Now, during your time -- as you previously testified you've  
7 been with the New York City Police Department for over 20  
8 years -- how many investigations have you been involved with  
9 during your time with NYPD?

10 MR. JOSEPH: Objection, relevance.

11 THE COURT: I'll allow it.

12 A. I would say thousands.

13 Q. Do you remember every single detail of every investigation?

14 A. No, ma'am.

15 THE COURT: Do you remember never having lost a box?

16 THE WITNESS: Right. That was the only time I lost a  
17 case file like that.

18 Q. And, again, why don't you remember every detail of every  
19 investigation that you handled?

20 MR. JOSEPH: Objection. Form.

21 THE COURT: I'll allow it.

22 A. It's just too much detail, too much investigation. You  
23 interview numerous witnesses, numerous victims. It's just --  
24 it's a lot of investigation.

25 Q. Well, in addition to interviewing witnesses and the things

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Agostini - cross

1 you've just stated, what were your general duties and  
2 responsibilities as a detective with the 43rd Precinct?

3 A. Our duties was to catch -- catch, meaning we receive  
4 complaints from people which were open, meaning could be  
5 domestic violence, shootings; not robberies, but homicides,  
6 domestic disputes.

7 Q. And at some point on February 12, 2001, was the  
8 investigation -- you previously testified that the  
9 investigation of Albert Acosta was reassigned to you as lead  
10 case detective, is that correct?

11 A. That's correct.

12 Q. Please explain for us what are the duties of a lead case  
13 detective in a homicide investigation.

14 A. Basically, the lead detective is in charge of the  
15 investigation and if he wants certain things done, he ought to  
16 ask people. He doesn't do everything. He ought to ask people  
17 either to canvass, meaning interview people in this building,  
18 or do something else, go to the hospital, or anything like  
19 that. But the lead detective is in charge of the  
20 investigation.

21 Q. And, again, in charge, if you could just explain.

22 A. In charge meaning he's basically directing the  
23 investigation.

24 Q. Now, during of course of an investigation you've testified  
25 that you and other detectives create what's called DD5s?

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Agostini - cross

1 A. Yes.

2 Q. And so we understand more, could you just please explain  
3 exactly what a DD5 is?

4 A. A DD5 is a follow-up, and basically it's a form where  
5 basically we use it to interview people. If anyone needs to be  
6 interviewed we put it on a DD5.

7 Q. Do you also carry a spiral notebook with you during an  
8 investigation?

9 A. Yes.

10 Q. And why do you carry a spiral notebook?

11 A. Because we basically interview a person, we put it on a  
12 spiral notebook, the information they give us, and from the  
13 spiral notebook it goes onto a DD5.

14 Q. Is there any difference between what is in your notes, your  
15 handwritten notes, and what would be in a DD5?

16 A. I would say it's the same thing.

17 Q. And the DD5s for this case, were they provided to the  
18 district attorney's office prior to the grand jury?

19 A. Yes.

20 Q. Now, Detective Agostini, I'd like to specifically talk to  
21 you about this investigation and some of the events that  
22 occurred. Approximately how many members of the 43rd Precinct  
23 were involved in this investigation?

24 A. Like the whole squad. I can't -- more than, I would say,  
25 15 people.

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Agostini - cross

1 Q. More than 15 people?

2 A. I would say, yes.

3 Q. Were there also other individuals not working with the 43rd  
4 Precinct that were involved in the case?

5 A. There were people from the crime scene and other units.

6 Q. When adding people with the crime scene, people from other  
7 units and people from the 43rd Precinct, would you say that  
8 more than 20 individuals participated in this investigation?

9 A. I would say more than 20. It was an approximate.

10 Q. Definitely more than 20, you're saying?

11 A. I'm not sure more than 20. I'm saying it was an  
12 approximate.

13 Q. Many individuals, though?

14 A. Yes.

15 Q. I am going to show you or enter into evidence what's been  
16 marked as Defendants' Exhibit W.

17 (Defendants' Exhibit W received in evidence)

18 Q. Detective Agostini, who prepared Defendants' Exhibit W?

19 A. I did.

20 Q. And if you could please tell us -- or when was this  
21 document prepared?

22 A. February 12, 2001.

23 Q. What does this document indicate had occurred as a part of  
24 your investigation?

25 THE COURT: You're putting it in evidence, right?

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Agostini - cross

1 MS. OKEREKE: Yes, your Honor.

2 THE COURT: Maybe you can read it.

3 Q. Please do.

4 A. It says: Subject, responding to Jacobi Hospital. On  
5 February 12, 2001, at approximately 1100 hours, Detective  
6 Ramirez and the undersigned, which is me, responded to Jacobi  
7 Hospital in regards to this case. The undersigned spoke with  
8 PO Gebbia and PO Mauro of the 43rd Precinct and they gave me  
9 the following pedigree on the victim: Albert Acosta, date of  
10 birth, his address, telephone number. The other side conferred  
11 with Dr. Touger, who stated victim was shot once in the back of  
12 the head, which is so far, and is likely to die.

13 Q. In summary, this DD5 represents a response that you made to  
14 Jacobi Hospital in the morning of the homicide?

15 A. Yes.

16 Q. Why was that done? Why was that action taken?

17 A. Basically, if you wanted to get on a DD5, which is on  
18 record what the victim's status is and whether the doctor is  
19 saying about what's wrong with the victim.

20 Q. Was this action then, your response to Jacobi, taken in  
21 furtherance of your conducting an investigation in this case?

22 A. Can you rephrase it, please?

23 Q. And this was done in furtherance of your investigation?

24 A. Yes.

25 Q. Was this DD5 a part of your case file?

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Agostini - cross

1 A. Yes.

2 Q. And was this DD5 given to the DA before she presented her  
3 case to the grand jury?

4 A. Yes.

5 MS. OKEREKE: Now entering into evidence Defendants'  
6 Exhibit U-3.

7 (Defendants' Exhibit U-3 received in evidence)

8 Q. Detective Agostini, who prepared this document?

9 A. Shawn Abate.

10 Q. When was this document created?

11 A. February 12, 2001.

12 Q. And what does this document indicate?

13 A. Basically, a notification to gang intel.

14 Q. Why was this done on the day of the homicide?

15 A. Why was it done?

16 Q. Yeah. Why would this sort of action be taken?

17 A. I don't know. I didn't prepare this.

18 Q. But would this action or this event be taken in the course  
19 of an investigation?

20 A. Yes.

21 Q. Was this DD5 a part of your case file?

22 A. Yes.

23 Q. And was this DD5 given to the district attorney before she  
24 presented her case to the grand jury?

25 A. Yes.

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Agostini - cross

1 MS. OKEREKE: Your Honor, I'm now introducing into  
2 evidence what's been marked as Defendant's V-3.

3 (Defendants' Exhibit V-3 received in evidence)

4 Q. Detective Agostini, who prepared this document?

5 A. Shawn Abate.

6 Q. When was this document created?

7 A. February 12, 2001.

8 Q. And what does this document indicate had occurred on  
9 February 12, 2001?

10 A. Basically, it says notification to the video unit.

11 Q. And what is a notification to the video unit? What is your  
12 understanding of what that is?

13 THE COURT: It speaks for itself. It's in evidence.

14 MS. OKEREKE: I do agree.

15 Q. Detective Agostini --

16 THE COURT: That's comforting.

17 Q. Did Detective Abate tape these events in connection with  
18 the investigation?

19 A. Yes.

20 Q. Was this DD5 a part of your case file?

21 A. Yes.

22 Q. And was this DD5 given to the district attorney before she  
23 presented her case to the grand jury?

24 A. Yes.

25 MS. OKEREKE: Now I'm introducing into evidence what's

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1 been marked as Defendants' Exhibit S

2 (Defendants' Exhibit S received in evidence)

3 Q. Detective Agostini, who prepared this document?

4 A. I did.

5 Q. When was this document created?

6 A. February 12, 2001

7 Q. What does this document indicate?

8 A. An interview with resident at 1700 Metropolitan Avenue,  
9 apartment 5E

10 Q. And why were the residents of apartment 5E being  
11 interviewed on the day of the homicide?

12 A. Because I believe that morning there was a radio call of a  
13 dispute

14 Q. Was this event done in connection with the investigation?

15 | A VOC

16 Q. Was this DD5 a part of your case file?

17 A Yes

Q. And was this DD5 given to the district attorney before she presented her case to the grand jury?

20 | Page

MS. OKEREKE: I'm now entering into evidence what's  
been marked as Defendant's Exhibit 1-2.

(Defendants' Exhibit A-3, magnified, is attached hereto and made a part hereof.)

THE COURT: I don't think there was any objection, so  
it will be admitted without objection.

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Agostini - cross

1 Q. Who prepared this document, Detective Agostini?

2 A. I did.

3 Q. When was this document created?

4 A. February 12, 2001.

5 Q. Could you please read for the jury Defendants' Exhibit A-2.

6 A. Yes. It's conferred with EMS. On February 12, 2001, at  
7 approximately 1205 hundred hours, the other side conferred with  
8 EMS number 1370 Marquez who stated Anthony Manganiello, date of  
9 birth, is suffering from short of breath and wants to go to the  
10 hospital.

11 Q. Why would you confer with EMS?

12 A. Basically, they came in.

13 Q. Do you confer with every party that has information  
14 regarding an investigation?

15 A. Most of the time, yes.

16 Q. And in this case that DD5 represents that you conferred  
17 with EMS, correct?

18 A. That's correct.

19 Q. Was this DD5 a part of your case file?

20 A. Yes.

21 Q. And was this DD5 presented to the DA before she presented  
22 her case at the grand jury?

23 A. Yes.

24 MS. OKEREKE: Defendants now enter into evidence  
25 what's been marked as Defendants' Exhibit T, T as in Tom.

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1                   THE COURT: I assume you know -- if not, the plaintiff  
2 would object -- that there was no objection or I ruled that it  
3 was admissible.

4                   MS. OKEREKE: That's correct, your Honor.

5                   (Defendants' Exhibit T received in evidence)

6                   THE COURT: What are we looking at?

7                   MS. OKEREKE: Defendants' Exhibit T.

8 Q. Who prepared this document or this DD5?

9 A. I did.

10 Q. When was this document created?

11 A. February 12, 2001.

12 Q. What does this document indicate?

13 A. Interview with Anthony Manganiello.

14 Q. Let's talk a little bit more about that interview. Where  
15 in the 43rd Precinct -- you previously testified that this  
16 interview was conducted in a lunchroom?

17 A. It was our 43 squad lunchroom.

18 Q. Why would an interview be conducted in a lunchroom?

19 A. When we have witnesses -- I wouldn't say witnesses, meaning  
20 our own. When cops come or anybody that we don't think to us  
21 is a witness, because we take witnesses sometimes, there is an  
22 interrogation room. When cops come or we have to interview  
23 somebody, we will bring them into our lunchroom.

24 Q. So in this situation the plaintiff was not taken into the  
25 interrogation room, correct?

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1 A. Correct.

2 MR. JOSEPH: Objection, leading.

3 Q. How long did this interview last?

4 A. The interview lasted, I am going to say, 10 to 15 minutes.

5 Q. When did the interview end?

6 A. When detective Rubin Gonzalez came in and said that the  
7 lawyer called and to have him stop questioning.

8 Q. Now, you testified earlier that you felt it was suspicious  
9 that a lawyer appeared?

10 A. Yes.

11 Q. Why is that?

12 A. Because when Anthony Manganiello first came in, my  
13 impression was -- he was out of breath and everything -- my  
14 impression was he must have ran after someone or he has some  
15 type of information that he's going to give us. Maybe he saw  
16 what happened. That's why he was out of breath. So we brought  
17 him in.

18 Q. Because he was a witness?

19 A. Correct.

20 Q. If you could talk further about why you found it  
21 suspicious. Please continue.

22 A. When we first came in, I had the name and the date of birth  
23 from EMS, so now when he sits down, basically, when we do an  
24 interview we ask the person's name, address, telephone number  
25 only because if we need to contact them again or call them we

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1 don't have to go to their house or anything like that.

2 Q. And do you do with every witness --

3 A. We do with most of them, yes. We start off that way, that  
4 way we don't forget; in case the interview is over, we forget  
5 to ask them about the address. That's how we start an  
6 interview. And when I started the interview and I asked him  
7 what's your address, he says, I don't know. And I'm going like  
8 this, what? And I says, you have a phone? And he goes, it's  
9 unlisted. Obviously, he wasn't going to tell me anything.  
10 That's when I asked him when was the first and last time you  
11 saw Acosta. And he said in roll call. And I asked, did you  
12 have any problems with him or anyone else has any problem with  
13 Acosta? But he didn't answer.

14 Q. What, if anything, was your impression to those responses?

15 A. My impression was that if it was me, I put myself in that  
16 position and it was my partner, I think I would cooperate with  
17 the cops. I don't think you could shut me up if I had some  
18 information. And if I didn't have information, I would tell  
19 you, no, I just got there at the scene and this is what  
20 happened, but I didn't get anything from him.

21 Q. At some point again, you testified earlier that you were  
22 notified that the plaintiff's lawyer had requested that the  
23 questioning be stopped, is that correct?

24 A. That's correct.

25 Q. And you also testified earlier that you felt that this was

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1       suspicious?

2       A. Right after the lawyer called, yes.

3       Q. Why did you find that suspicious?

4       A. Like I said, if I was in that position I would give as much  
5 information, if I knew something. If I didn't know I would  
6 cooperate. Why a lawyer all of a sudden calls. Either you  
7 have information or you don't have information. Why now a  
8 lawyer calls and says stop questioning. I didn't understand  
9 that.

10           MS. OKEREKE: Defendant's introduce into evidence  
11 what's been marked as Defendants' Exhibit U.

12           (Defendants' Exhibit U received in evidence)

13       Q. I would like to ask you some more questions about the some  
14 of the events that were conducted in the investigation,  
15 Detective Agostini.

16           Who prepared this DD5?

17       A. I did.

18       Q. When was this document prepared?

19       A. February 12, 2001.

20       Q. And what event does this document memorialize that was  
21 conducted by police officers in this investigation?

22       A. It's basically the conferral with ADA Dondes.

23       Q. Why was ADA Dondes conferred?

24       A. Basically, if someone is shot and likely to die or someone  
25 was shot and killed, you have to notify the DA's office.

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1 Q. Is this a regular event that would be conducted in the  
2 course of a homicide investigation?

3 A. Or a shooting, yes.

4 Q. Was this DD5 a part of your case file?

5 A. Yes.

6 Q. And was this DD5 given to the district attorney before she  
7 presented her case to the grand jury?

8 A. Yes.

9 MS. OKEREKE: Defendants enter into evidence what's  
10 been marked as Exhibit Z.

11 (Defendants' Exhibit Z received in evidence)

12 Q. Who prepared this DD5, Detective Agostini?

13 A. I did.

14 Q. When was this document created?

15 A. February 12, 2001.

16 Q. What does this document memorialize. What event in the  
17 investigation does this document memorialize?

18 A. It was the interview with officers who transported Anthony  
19 Manganiello.

20 Q. And why was this interview conducted?

21 A. Basically, you do interview maybe just in case someone has  
22 something to say. Someone might say something in a car. I  
23 wasn't present. Or you want to know if there is anything  
24 unusual that happened during the ride or what happened when you  
25 picked them up.

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1 Q. Was this DD5 created as a normal part of your duties in  
2 this investigation?

3 MR. JOSEPH: Objection. Leading.

4 THE COURT: I'll allow it.

5 A. Yes.

6 Q. Was this DD5 a part of your case file?

7 A. Yes.

8 Q. And was this DD5 given to the district attorney before she  
9 presented her case to the grand jury?

10 A. Yes.

11 MS. OKEREKE: Defendants introduce Exhibit R,  
12 Defendants' Exhibit R into evidence.

13 (Defendants' Exhibit R received in evidence)

14 Q. Who prepared this DD5?

15 A. I did.

16 Q. When was this document created?

17 A. February 12, 2001.

18 Q. And what event in the investigation does this DD5  
19 memorialize?

20 A. Interview with Parkchester supervisor.

21 Q. This Parkchester security supervisor, why were they  
22 interviewed?

23 A. Basically, it had to do with Parkchester security, so we  
24 interviewed their supervisors.

25 Q. Did you interview several individuals at Parkchester?

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1 A. Certain individuals, yes.

2 Q. I'm sorry. Did you interview several individuals at  
3 Parkchester?

4 A. Many people in Parkchester, yes.

5 Q. Approximately how many?

6 A. Well, it was two detectives. I know we interviewed the  
7 whole Parkchester security, I believe, in one day. I don't  
8 know. It has to be more than 20, more than 25 maybe.

9 Q. Each of these interviews were conducted as a part of the  
10 investigation, is that correct?

11 A. Yes.

12 Q. Was this DD5 a part of your case file?

13 A. Yes.

14 Q. And was this DD5 the information in that DD5 given to the  
15 district attorney before she presented her case to the grand  
16 jury?

17 A. Yes.

18 THE COURT: Ms. Okereke, the problem I have is he has  
19 already indicated on direct, unless you want to argue with it,  
20 that all of the DD5s were shown or received by the ADA prior to  
21 the box having disappeared. We really can save some time,  
22 unless you disagree with that analysis.

23 MS. OKEREKE: Your Honor, what is at issue in this  
24 case is the information that was collected --

25 THE COURT: When I talk you don't talk because he can

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1       only get one person and I assure you if he has to choose, he  
2       will choose me.

3                  MS. OKEREKE: That is true.

4                  THE COURT: What I'm saying is, I don't mind about the  
5       input or the meat, whatever, but I don't think that line is  
6       necessary since we already know that before it disappeared he  
7       had turned over the DD5.

8                  Is that true?

9                  THE WITNESS: Yes.

10                 MS. OKEREKE: Defendants will continue with the  
11       explanation of the DD5s, though.

12                 THE COURT: I have no problem.

13                 MS. OKEREKE: I will refrain from the line that each  
14       of the DD5s are provided to the DA prior to her presentation of  
15       the case to the grand jury.

16                 Defendants now introduce what's been marked as  
17       Defendants' Exhibit V.

18                 (Defendants' Exhibit V received in evidence)

19       Q. Who prepared this DD5?

20       A. I did.

21       Q. When was this document created?

22       A. February 12, 2001.

23       Q. What does this document indicate, if you could please tell  
24       the jury?

25       A. Basically, it's -- I observed the inventory of Anthony

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1 Manganiello's locker and it was done under the direction of  
2 their supervisors.

3 Q. Why was this event done or why was this action take?

4 A. Basically, we were looking to see if the weapon used in the  
5 homicide was in the locker room.

6 Q. Is this a normal activity that you would conduct in the  
7 course of a homicide investigation?

8 A. During the homicide investigation we do search locations  
9 with warrants. We do look for weapons, yes.

10 Q. Again, this DD5 is part of your case file?

11 A. Yes.

12 MS. OKEREKE: Defendants now introduce into evidence  
13 what's been marked as Defendants' Exhibit Y.

14 (Defendants' Exhibit Y received in evidence)

15 Q. Detective Agostini, does Defendants' Exhibit Y represent  
16 yet another action that was taken in the course of this  
17 investigation?

18 A. Yes.

19 Q. And who prepared Defendants' Exhibit --

20 A. I did.

21 Q. When was this document created?

22 A. February 12, 2001.

23 Q. And what does this document indicate that -- what event  
24 does it indicate was taken in the course of this investigation?

25 A. This document indicates that the person who was shot was

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1 still alive, so the investigation went from assault 1 and it  
2 was reclassified to murder.

3 Q. And at this time it was reclassified to you, isn't that  
4 correct?

5 A. Yes.

6 MS. OKEREKE: Defendants introduce into evidence  
7 what's been marked as Defendants' Exhibit S-4.

8 (Defendants' Exhibit S-4 received in evidence)

9 Q. Who prepared Defendants' Exhibit S-4?

10 A. I can't make out the name. It's partially blocked in the  
11 bottom. It looks like C-a-b-a-s-s-a.

12 Q. Would this document have been created by one of the  
13 detectives?

14 A. Yes.

15 Q. Who was a part of the investigation?

16 A. Yes.

17 Q. When was this document created?

18 A. On February 12, 2001.

19 Q. And what investigative action does this document or this  
20 DD5 memorialize?

21 A. It basically says canvass of Yonkers pistol range.

22 Q. Do you know why a canvass was done of the Yonkers pistol  
23 range?

24 A. No, ma'am.

25 Q. Was this action or this event done in the course or in

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1 furtherance of the investigation?

2 A. Yes.

3 Q. Again, this DD5 was a part of your case file, correct?

4 A. Yes.

5 MS. OKEREKE: Defendants introduce into evidence  
6 what's been marked as Defendants' Exhibit T-4.

7 (Defendants' Exhibit T-4 received in evidence)

8 Q. Detective Agostini, let's stick with S-4 for a moment. I'd  
9 like for you to read that DD5 for the jury.

10 A. Sure. On February 12, 2001, at approximately 2000 hours,  
11 the undersigned, which is Cabassa, along with Detective Peters,  
12 did canvass Yonkers Coin Park Pistol Range. The undersigned  
13 did interview the range officer, Robert Cabassa, who did a  
14 computer check into the membership of the range and found that  
15 Anthony Manganiello is not and never was a member of the Coin  
16 Park Yonkers Pistol Range. The undersigned also reviewed the  
17 nonmembership sign-in sheets dating back to June of 2000, and  
18 also found that Anthony Manganiello was not -- has not used the  
19 range during that period.

20 Q. And this was a piece of information that was obtained on  
21 February 12, 2001, correct?

22 A. Yes.

23 MS. OKEREKE: Now defendants enter into evidence  
24 what's been marked as Exhibit T-4.

25 Q. Who prepared this DD5?